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CURRENT EVENTS.

SELECTION OF JURORS.—We learn from the New York *Nation* of the 30 ult. that the magnates of that city, municipal and judicial, are very seriously considering the operation of the jury law, so far as concerns the selection of jurors. Mayor Hewitt has ordered an investigation of the subject, and appeals for co-operation to the judges and the bar association.

Judge Barrett in a recent interview expressed himself very strongly on the subject. He says:

"The principal drawback to the present system is, that there is really no system at all. If the dregs of the directory, supplemented with a limited percentage of good names, had been pitched haphazard into the jury-box, we could not have had anything worse than at present exists. The box is an insult to this great city. It seems to preponderate with a representation of everything that is low, ignorant, vicious and unintelligent. The panels in these great trials have constantly brought forth a preponderance of illiterate and disqualified jurors. There seems also to be a preponderance of particular interests. Take the retail liquor business as an example. These people are of course entitled to representation in the jury-box the same as all other citizens. But why should they so vastly preponderate? They come to us in every name and guise, as 'liquors,' 'eating-house,' 'importer,' 'wines,' 'lager beer,' 'restaurant,' 'grocer,' 'saloon,' etc."

The *Nation* adds to this stringent charge: "The number of fit men whose names get into the jury-box steadily diminishes, for various reasons, none of which are creditable. It is common knowledge that many pay liberally for their exemption."

The state of affairs on this subject in New York City is not without a parallel in most of the larger cities of the country, nor, we may add, is it wholly unknown in the rural districts. The fault is not in the law, nor, altogether, or even chiefly, in its administration or its officers, the cause lies deeper and is far more difficult of eradication. It is simply the criminal apathy of the better class of citizens with reference to these evils, the results of which they read daily in the newspapers, and their persistent efforts to shirk *per fas ant nefas* the performance of irksome and disagreeable duties. There are good and lawful men enough and to spare to perform without hardships upon anybody all jury duty, and yet men of the better class who pay full taxes and discharge all other duties incumbent upon them as law abiding citizens, habitually and systematically evade this important duty—beg or *buy* exemption from it, and then wonder that jury duty is so ill performed by the "dregs of the directory" to whom they have remitted it.

We can tell a little story illustrative of this phase of the subject. Soon after the "surrender," as they call it in the South, there was in Mississippi a grand jury composed exclusively of negroes, except one white man, the foreman. He was asked why the colored element preponderated so decidedly in the jury-box; whether the white planters and property owners of the county were all disfranchised, and, if not, why they were content to leave this important duty to the ignorant and newly emancipsted freedmen. "Oh, no," he said, "they were not disfranchised, but they had their crops to attend to—*they* could not spare time to serve on juries."

This, we think, furnishes the key to the whole question. The property holders and business men of New York, and of every other place, as for that matter, have "*their* crops to attend to," and have or pretend that they have no time to serve on juries, and hence that duty is delegated to the "dregs of the directory."

Judge Barrett calculates that 30,000 men would supply all the courts of New York city, and that out of a voting population of 230,000 the required number of suitable and competent men could easily be procured, and yet no one man would be obliged to serve more than five days in two years. There can be no doubt that in the city of New York and everywhere else the material for good juries is superabundant, but the question remains: How can a law be framed, and especially how can it be enforced which will segregate the

proper number of good jurors with the minimum admixture of bad jurors? Yet another question arises: Can a law on that subject be properly administered irrespective of party politics? We are strongly inclined to doubt it, for wherever there is a salary, there political influence will enter as surely as water will seek and find its level, and wherever political influence enters, there must be favors to be asked, granted and received.

The chief difficulty lies in the apathy of the community on the subject. Whenever an abuse becomes flagrant and outrageous the public is aroused, righteous indignation is rife—for a season—and then falls asleep or is crowded out by a new sensation. Just now the "boodle" trials and the Jacob Sharp case have attracted attention to the annually deteriorating quality of jurors; a month hence the whole subject will probably be relegated to "a more convenient season," or forgotten altogether.

There is one point of this subject which we hope may escape oblivion. The *Nation* says that it is not unusual for men to *pay* for exemption from jury duty. In other words, they bribe the officials. If this is not against the law it should be made so immediately, and full doses of (Jacob) Sharp medicine administered as well to the giver as the receiver of the bribe. And it is equally just that he who to escape a trifling inconvenience induces a public officer to stain his soul with a bribe, should suffer the same penalty inflicted upon him who does the same thing under much stronger temptation.

NOTES OF RECENT DECISIONS.

INTERSTATE COMMERCE—DRUMMERS' TAX—CONSTITUTIONAL LAW.—The Texas Court of Appeals[1] has recently rendered a decision of some interest on the recent rulings of the Supreme Court of the United States, with references to the taxes imposed upon drummers and traveling salesmen which are so common in all the States.

We are indebted to a correspondent for an early (newspaper) copy of the opinion of the court, from which it seems that in Texas the law imposes a license tax of $25 on every person doing a business as a drummer, traveling salesman or solicitor. It appears that Asher, a citizen of Louisiana, failed to take out a license or pay the $25, was fined $35 by a justice of the peace for his failure to do so, and upon refusal to pay the fine was committed to jail. He sued out a writ of *habeas corpus*, and then the question came before the Texas Court of Appeals.

That court, in our opinion, admits away its case (if such an expression can properly be applied to a court) at the very outset of its opinion. It says, speaking of the Robbins case, decided March 7, 1887, by the Supreme Court of the United States:

"We are free to admit that a majority of the court in that case so held the law to be. We are free to admit that if the decision of the majority be correct, it settles the law of this case in favor of the position assumed for applicant. We are further free to admit that in all cases involving clearly and unquestionably the constitutionality and validity of State laws with reference to provisions of the Constitutions of the United States—the decisions of the Supreme Court of the United States—clearly, certainly and unequivocally expressed upon those questions, should and ought to be binding upon the State courts, because we fully recognize that 'it is essential to the protection of the national jurisdiction, and to prevent collision between the State and national authority, that the final decision upon all questions arising in regard thereto should rest with the courts of the Union'" (Cooley's Const. Lim., 5th ed., p. 16).

The opinion of a majority of a divided court may not be as conclusive as an unanimous decision, so far as authority is concerned in the same court. But as for subordinate courts and in federal questions *all* State courts are subordinate, the latest utterances of the highest court of the Union constitute the law of the land and are absolutely conclusive, so far as such decisions are applicable, until they are overruled by the court which rendered them. Nor does it matter, as to subordinate courts, whether the decisions be unanimous or by a divided court. They express the law as far as they go and until they shall be overruled.

The Texas Court of Appeals proceeds to say:

[1] *Ex parte* Asher.

"But such decisions, no more than the decisions of the State courts, are or should be binding upon the latter, if in themselves unwarranted assumptions of constitutional authority—invocations of the federal power, where such power does not and was never intended to apply and operate; and, moreover, where said decisions are directly in conflict with well adjudicated cases of the same court, which are not overruled, and which, in addition to their equal authority, are based upon fundamental and eternal principles of reason, justice and right."

This is all very well, but who shall say that decisions of the Supreme Court of the United States contain "unwarranted assumptions of constitutional authority—invocations of the federal power, where such does not and was never intended to apply and operate?" If one State court can say so of one decision of the Supreme Court of the United States and disregard it accordingly, so can any other State court; and if one ruling of the Supreme Court of the United States on a distinctly federal question, such as that under consideration, can be so disregarded, so any other ruling may as well be questioned, and the jurisdiction of the Supreme Court of the United States be thus utterly abrogated. To this conclusion the *dictum* last quoted from the Texas Court of Appeals irresistibly tends, and it can hardly be characterized otherwise than as simply *absurd*.

We have thus far treated this ruling gravely because we would by all means avoid the guilt of *scandalum magnatum*. To irreverent persons the overruling by a State court of a very recent and solemn decision on a federal question by the Supreme Court of the United States might suggest the well known exploit of Mrs. Partington, who armed with her map defied the Atlantic ocean. And other light-minded people might wonder that the Texas Court of Appeals should have forgotten the tragical fate of the daring butt injudicious wight who essayed to butt the bull off the bridge. We, however, are grave and always treat with appropriate respect the rulings, howsoever erroneous we may deem them, of respectable appellate courts.

INSURABLE INTERESTS.

GENERALLY.

Insurable Interest Essential. — A policy of insurance obtained upon a subject in which the assured has no interest is void, whether or not it be so stipulated therein. No action can be maintained upon it; and notes given for premiums upon such insurance are void for want of consideration.[1] But just what amounts to an insurable interest has been a matter of much discussion in the courts, and cannot be definitely stated for all cases. It is, however, certain that the interest need not be the largest which may be had in the subject-matter, nor need it be an absolute or vested interest; indeed, it does not seem to be essential that the assured have any property in the subject of insurance.[2] Probably it may be safely said, that if pecuniary loss would be suffered by the assured by a loss of the subject-matter, his interest therein is an insurable one.[3] The interest must not, however, be an immoral or illegal one. Such interests cannot be thus protected.[4]

Of Equitable Owner.—One may, for instance, insure his equitable interest in property, the legal title to which is in another.[5] So,—

Of Different Parties Having Different Interests.—Different parties having different interests in the same subject-matter may severally procure insurance of their several interests;[6] but the mere fact of one being a part owner of property, does not give him an insurable interest in that portion which he does not own.[7]

[1] Bersch v. Sinnissippi Ins. Co., 28 Ind. 64; Fowler v. New York, etc. Ins. Co., 26 N. Y. 422; Peabody v. Washington Ins. Co., 20 Barb. 339; Freeman v. Fulton Ins. Co., 38 *Id.* 247; Tallman v. Atlantic Ins. Co., 29 How. Pr. 71; Sawyer v. Mahew, 51 Me. 398; Sweeney v. Franklin Ins. Co., 20 Pa. St. 337. But see Trenton, etc. Ins. Co. v. Johnson, 24 N. J. L. 576; Mawry v. Home Ins. Co., 9 R. I. 346.

[2] Buck v. Chesapeake Ins. Co., 1 Pet. 163.

[3] Rohrback v. Germania Fire Ins. Co., 62 N. Y. 47; Fenn v. New Orleans Mut. Ins. Co., 53 Ga. 578; Merritt v. Farmers' Ins. Co., 42 Iowa, 11; Agricultural Ins. Co. v. Clancey, 9 Ill. App. 137.

[4] Lord v. Dall, 12 Mass. 115; Mount v. Waite, 7 Johns. 434.

[5] Oliver v. Green, 3 Mass. 133; Locke v. N. A. Ins. Co., 1 Bed. 61; Bartlett v. Walter, *Id.* 267; Coursin v. Pa. Ins. Co., 46 Pa. St. 323.

[6] Higginson v. Dall, 13 Mass. 96; Locke v. N. A. Ins. Co., *Id.* 61; Garrell v. Hanna, 5 Har. & J. 412.

[7] Reed v. Pacific Ins. Co., 1 Metc. 16; Turner v

Of Insurable Interests in Property, Including Marine Property, Specifically.

The foregoing principles will have illustration in the following instances:

Of Lessor and Lessee.—As stated, it is not the largest interest alone that may be had in the subject-matter that may be insured. Thus, a lessor has an insurable interest in buildings or other property leased.[8] It has also been held that, for his better security for the rent, he has an insurable interest in structures erected by the lessee, and which the latter has the right to remove,[9] as well as in those which the tenant has not the right to remove.[10] The lessee also has an insurable interest in leased structures;[11] but a mere intruder upon land has no such interest in buildings thereon, even though he may have erected them.[12] A lessee's interest is at an end when he surrenders possession under a notice to quit, or otherwise yields up the premises.[13]

Of Mortgagor and Mortgagee.—The interest of both mortgagor and mortgagee in mortgaged property is insurable.[14] This is true of the interest of the mortgagor, though the property be mortgaged to its full value,[15] or after a sale of the property by him, where his personal bond accompanies the mortgage.[16] And where there are several mortgages of the same property, the interest of each mortgagee is an insurable interest,[17] and this although the mortgage note may have been transferred by indorsement.[18] Likewise, one who holds a mortgage as collateral security for a debt has an insurable interest in the mortgaged property so long as the debt remains unpaid.[19] The insurable interest of the mortgagor extends to the full value of the property, equally whether the mortgage was made before or after the policy.[20] But he ceases to have an insurable interest in the property mortgaged after a sale by a master in chancery under a decree of foreclosure, and payment of a part of the purchase money, and this though the decree is not enrolled, nor the deed executed at the time of sale.[21] From the time of sale the property is at the risk of the purchaser, and the deed relates to that time. However, where a foreclosure sale is vacated for irregularity, and the order of confirmation set aside, the insurable interest of the mortgagor remains and continues precisely as though no sale had been attempted;[22] and in Wisconsin it has been decided that this insurable interest continues until the time of redemption expires.[23]

Of Lien Holder.—A person entitled to a lien on a building under a lien statute,[24] or on personal property by virtue of either a statute or the common law, has an interest in the same which is insurable.[25]

Of Vendor and Vendee.—A person has an insurable interest in property, real or personal, which he has contracted to sell,[26] to

Burrows, 5 Wend. 541; Foster v. United States Ins. Co., 11 Pick. 86; Murray v. Columbian Ins. Co., 11 Johns. 302.

[8] New York v. Brooklyn, etc. Ins. Co., 41 Barb. 231; Ely v. Ely, 80 Ill. 532.

[9] New York v. Exchange Ins. Co., 9 Bosw. 424; Miltenberger v. Beacon, 9 Pa. St. 198.

[10] New York v. Hamilton Ins. Co., 10 Bosw. 537.

[11] Allen v. Sun Mut. Ins. Co., 36 La. Ann. 767; Niblo v. N. A. Ins. Co., 1 Sandf. 551; Fletcher v. Com. Ins. Co., 18 Pick. 419; Tongue v. Nutwell, 31 Md. 302. Any tenant: Lawrence v. St. Marks Ins. Co., 43 Barb. 479; Mitchell v. Home Ins. Co., 32 Iowa, 421.

[12] Sweeney v. Franklin Ins. Co., 20 Pa. St. 337. And see Oliver v. Greene, 3 Mass. 133.

[13] Birmingham v. Empire Ins. Co., 42 Barb. 457.

[14] Honore v. Lamar, etc. Ins. Co., 51 Ill. 409; Washington, etc. Ins. Co. v. Kelley, 32 Md. 421; Traders' Ins. Co. v. Robert, 9 Wend. 404; McDonald v. Black, 20 Ohio, 185; Strong v. Manufacturers' Ins. Co., 10 Pick. 40; Curry v. Commonwealth Ins. Co., *Id.* 535; Excelsior Fire Ins. Co. v. Royal Ins. Co., 55 N. Y. 343; Lycoming Fire Ins. Co. v. Jackson, 83 Ill. 302; Columbia Ins. Co. v. Lawrence, 2 Pet. 25; Swift v. Mut., etc. Ins. Co., 18 Vt. 304; Keller v. Merchants' Ins. Co., 7 La. Ann. 29; Fox v. Phœnix, etc. Ins. Co., 52 Me. 333; Davis v. Quincy, etc. Ins. Co., 10 Allen, 113; Tellon v. Kingston, etc. Ins. Co., 7 Barb. 570; Kemocham v. N. Y., etc. Ins. Co., 5 Duer, 1; King v. State M. F. Ins. Co., 7 Cush. 1.

[15] Higginson v. Dall, 13 Mass. 96; Gordon v. Mass. Ins. Co., 2 Pick. 249.

[16] Waring v. Loder, 53 N. Y. 581.

[17] Fox v. Phœnix Ins. Co., 52 Me. 333.

[18] Williams v. Roger Williams Ins. Co., 107 Mass. 377.

[19] Insurance Co. v. Woodruff, 26 N. J. L. 541.

[20] French v. Rogers, 16 N. H. 177; Strong v. Manufacturers' Ins. Co., 10 Pick. 40; Curry v. Commonwealth Ins. Co., *Id.* 535; Allen v. Franklin Fire Ins. Co., 9 How. Pr. 501.

[21] McLarm v. Hartford Fire Ins. Co., 5 N. Y. 151. *Contra:* Marts v. Cumberland Mut. Fire Ins. Co., 44 N. J. L. 478.

[22] Richland Co. Mut. Ins. Co. v. Sampson, 38 Ohio St. 672.

[23] Mechler v. Phœnix Ins. Co., 38 Wis. 665.

[24] Insurance Co. v. Stinson, 103 U. S. 25; Carter v. Humboldt Ins. Co., 12 Iowa, 287.

[25] Hancox v. Fishing Ins. Co., 3 Sumn. 132; Russell v. Union Ins. Co., 1 Wash. 409; Donath v. Ins. Co., 4 Dall. 463; Seamans v. Loving, 1 Mass. 127; Murray v. Columbian Ins. Co., 11 Johns. 302.

[26] Ins. Co. v. Updegraff, 21 Pa. St. 513; Wood v.

the full value of the property, regardless of the price he has contracted to sell for.[27]

So a vendee in possession, under a contract for title on payment of the purchase money, has an insurable interest to the full value of the property,[28] even though he could not enforce the contract if resisted.[29]

Likewise, it has been held that one who has bid off property at an execution sale, though he pays no money and takes no deed, has an insurable interest.[30] But this would seem to be going to, if not beyond, the verge of the law. However, it was adjudged, in another case,[31] that a purchaser at sheriff's sale may truly declare himself to be the owner of the property, although the sheriff's deed has not, at the time of such declaration, been acknowledged.

Of Insolvent Debtor.—A debtor has an interest in property which he has assigned for the benefit of his creditors where there is an excess over his liabilities.[32] So,—

Of Assignee.—The assignee of an insolvent debtor,[33] or an assignee for security,[34] has an insurable interest in the property assigned.

Of Executors and Administrators.—Executors have an insurable interest in real estate which is devised by the testator's will;[35] and the same is true of administrators where the personal estate of the deceased is insufficient to pay the debts.[36]

Of Trustee.—A trustee holding the legal title to property may insure it for the use of the beneficiary,[37] and in the case of a trust deed, even though there be a conveyance by the grantor of his interest.[38]

Of Cestui Que Trust.—A *cestui que trust* may also insure his interest in the trust property.[39]

Of Tenant by the Curtesy.—Insurance on property in which a husband is tenant by the curtesy is valid;[40] and it has been held that a husband in possession and enjoyment with his wife of her real and personal property, with an inchoate right of curtesy, has an insurable interest in both.[41] But,—

Of Husband in Wife's Property.—It has also been held that a husband must specifically insure the right of using the property of his wife, in order to entitle him to recover damages for the loss of it.[42]

Of a Partner.—A partner has an interest in the partnership property which he may insure for his own benefit;[43] and this rule would extend to the case of a building erected with partnership funds on the land of a single partner.[44] Even a retiring partner has this interest, while any liability remains.[45] But,—

Of Stockholders in Corporate Property.—With regard to the interest of a stockholder in a corporation in the corporate property, the cases are at issue as to whether it is insurable.[46]

Of Agent or Consignee.—An agent or consignee, having the principal's property in his possession, and having a special interest in it

North Western Ins. Co., 46 N. Y. 421; Tallman v. Atlantic Fire & Marine Ins. Co., 4 Abb. App. 345.

[27] Stuart v. Columbian Ins. Co., 2 Cranch, C. C. 442.

[28] Shotwell v. Jefferson Ins. Co., 5 Bosw. 247; Southern Ins. Co. v. Lewis, 42 Ga. 587; Tuckerman v. Home Ins. Co., 9 R. I. 414; Rumsey v. Phœnix Ins. Co., 17 Blatchf. C. C. 527; Amsinck v. American Ins. Co., 129 Mass. 185; Reed v. Williamsburg City Fire Ins. Co., 74 Me. 537. And see Ayers v. Hartford, etc. Ins. Co., 17 Iowa, 176; M'Givney v. Phœnix, etc. Ins. Co., 1 Wend. 85; Simmes v. Marine Ins. Co. of Alexandria, 2 Cranch, C. C. 618; Rider v. Ocean Ins. Co., 20 Pick. 259; Kennedy v. Clarkson, 1 Johns. 385; Redfield v. Holland Purchase Ins. Co., 56 N. Y. 354.

[29] Ætna Ins. Co. v. Tyler, 16 Wend. 385; Smith v. Bowditch Ins. Co., 6 Cush. 448; Columbian Ins. Co. v. Lawrence, 2 Pet. 25.

[30] Ætna Ins. Co. v. Miers, 5 Sneed, 139.

[31] Susquehanna Mut. Fire Ins. Co. v. Staals, 102 Pa. St. 529.

[32] Lazarus v. Commonwealth Ins. Co., 19 Pick. 81.

[33] Herkimer v. Rice, 27 N. Y. 163; Marks v. Hamilton, 7 Exch. 323; Goulstone v. Royal Ins. Co., 1 F. & F. 276.

[34] Wells v. Philadelphia Ins. Co., 9 Serg. & R. 103.

[35] Phelps v. Gebhard, etc. Ins. Co., 9 Bosw. 404; Herkimer v. Rice, 27 N. Y. 163; Ins. Co. v. Chase, 5 Wall. 509.

[36] Sheppard v. Peabody Ins. Co., 21 W. Va. 368. But see Beach v. Bowery Fire Ins. Co., 8 Abb. Pr. 201.

[37] Young v. Union Ins. Co., 24 Fed. Rep. 279; Savage v. Howard Ins. Co., 52 N. Y. 502; Hughes v. Mercantile Ins. Co., 44 How. Pr. 351.

[38] Dick v. Franklin Fire Ins. Co., 81 Mo. 103; Graham v. Fremont Ins. Co., 2 Disney, 255.

[39] Gordon v. Mass. Ins. Co., 2 Pick. 249.

[40] Franklin Ins. Co. v. Drake, 2 B. Mon. 47; Harris v. York, etc. Ins. Co., 50 Pa. St. 341; Abbott v. Hampden Ins. Co., 30 Me. 414.

[41] Trade Ins. Co. v. Baracliff, 45 N. J. L. 543; s. c., 46 Am. Rep. 792.

[42] Cohn v. Virginia Fire, etc. Ins. Co., 3 Hughes, C. C. 272.

[43] Manhattan Ins. Co. v. Webster, 59 Pa. St. 227.

[44] Converse v. Citizens Mutual Ins. Co., 10 Cush. 37.

[45] Phœnix Ins. Co. v. Hamilton, 14 Wall. 504.

[46] Affirming: Seaman v. Enterprise, etc. Ins. Co., 18 Fed. Rep. 250; s. c., 5 McCrary, C. C. 558. And see Warren v. Davenport, etc. Ins. Co., 31 Iowa, 464. Denying: Riggs v. Commercial Mutual Ins. Co., 51 N. Y. Sup. Ct. 466.

to the amount of his commission, may insure it in his own name, and, in case of loss, recover the full amount of the policy, holding all beyond his own interest in trust for his principal.[47]

Indeed, it has been held that a commission merchant, to whom the cargo of a vessel is consigned for sale, has an insurable interest in his expected commissions, and may insure the same while the vessel is on her voyage.[48] And it may be said, generally, that a person charged by law, custom, or contract with the property of others, or having the right to protect the property, even though not bound to do so, or who will receive benefit from its continued existence, may insure it in his own name.[49] Thus,—

Of Common Carrier.—A common carrier may insure goods intrusted to him for carriage.[50] And,—

Of Builder.—Again, a builder engaged in the construction of a building, for which he is not to be paid until after its completion, has an insurable interest therein.[51]

Of Creditor in Property of Debtor.—A simple contract creditor has no insurable interest in the real estate of his debtor,[52] but otherwise with a judgment creditor, having a judgment lien.[53]

In the Profits of a Voyage or Enterprise.—An interest in the profits of a voyage, whether as owner of the vessel and cargo[54] or otherwise, is a lawful subject of insurance,[55] as are the profits expected to accrue from other property in which the assured has an interest,[56] or other business in which he is concerned.[57] So,—

Of Bottomry Interest.—An interest in the freight of a vessel is an insurable one.[58] But no other insurance is covered by an insurance on freight than freight strictly so called (that is, an interest accruing to the insured for the use of a vessel of which he is the owner), unless the assured has disclosed the peculiar nature of his interest.[59]

Of Master of Vessel.—The master of a vessel, on board which there is property consigned to him, has an insurable interest therein.[60] His commission is also insurable.[61]

OF INSURABLE INTERESTS IN HUMAN LIVES.

The assured in other kinds of insurance must have an interest in the subject-matter, so in life insurance the assured must have an interest in the life insured. Any person may insure his own life for the benefit of another,[62] even a stranger,[63] and it does not seem to affect the validity of the insurance that that other pays the premiums,[64] but if insurance be effected by one person on the life of another, the assured must show himself to have possessed an interest in the life of that other,[65] at any rate at the time the insurance was effected, though it does not seem to be necessary to show that the interest existed at the time of death, unless it be required by the terms of the policy.[66] Otherwise, the in-

[47] Ætna Ins. Co. v. Jackson, 16 B. Mon. (Ky.) 242; Hough v. People's Fire Ins. Co., 26 Md. 398; Baxter v. Hartford Fire Ins. Co., 11 Biss. C. C. 306; Williams v. Crescent, etc. Ins. Co., 15 La. Ann. 651; Deforest v. Fulton Ins. Co., 1 Hall, 84; Graham v. Firemans' Ins. Co., 2 Disney, 255; Sturm v. Atlantic Mut. Ins. Co., 63 N. Y. 77. Compare Parks v. General Interest Assurance Co., 5 Pick. 34. And see Aldrich v. Equitable, etc. Ins. Co., 1 Woodb. & M. 272; Shaw v. Ætna Ins. Co., 49 Mo. 578.

[48] Putnam v. Mercantile Marine Ins. Co., 5 Metc. 386.

[49] Eastern Railroad v. Relief Ins. Co., 98 Mass. 420.

[50] Savage v. Corn Exchange, etc. Ins. Co., 36 N. Y. 655; Chase v. Washington, etc. Ins. Co., 12 Barb. 595; The Sidney, 23 Fed. Rep. 88.

[51] Protection Ins. Co. v. Hall, 15 B. Mon. (Ky.) 411; Franklin, etc. Ins. Co. v. Coates, 14 Md. 285.

[52] Foster v. Van Reed, 5 Hun, 322.

[53] Spure v. Home Mut. Ins. Co., 8 Sawyer, C. C. 618; s. c., 15 Fed. Rep. 707. *Contra:* Grevemeyer v. Southern Ins. Co., 62 Pa. St. 340.

[54] Fasdie v. Norwich Ins. Co., 3 Day (Conn.), 108.

[55] French v. Hope Ins. Co., 16 Pick. 397; Locke v. N. A. Ins. Co., 13 Mass. 61.

[56] Sun Fire Office v. Wright, 3 N. & M. 819; Putman v. Mercantile Ins. Co., 5 Metc. 386; Loomis v. Shaw, 2 Johns. Cas. 36; Niblo v. N. A. Ins. Co., 1 Sandf. 551; Leonardo v. Phœnix Ins. Co., 2 Rob. (La.) 131.

[57] Sawyer v. Dodge Co. Ins. Co., 37 Wis. 503.

[58] McGaw v. Ocean Ins. Co., 23 Pick. 405; Griswold v. New York Ins. Co., 3 Johns. 321; Stone v. National Ins. Co., 19 Pick. 34; Lockwood v. Atlantic, etc. Ins. Co., 47 Mo. 50.

[59] Riley v. Delafield, 7 Johns. 522.

[60] Buck v. Chesapeake Ins. Co., 1 Pet. 163.

[61] Holbrook v. Brown, 2 Mass. 280.

[62] Gilbert v. Moose, 104 Pa. St. 74; s. c., 49 Am. Rep. 570; American, etc. Ins. Co. v. Robertshaw, 26 Pa. St. 189; Campbell v. New England, etc. Ins. Co., 98 Mass. 381; Ætna Life Ins. Co. v. France, 94 U. S. 561; Conn. Mut. Life Ins. Co. v. Schaefer, *Id.* 457. And compare Franklin Life Ins. Co. v. Sefton, 53 Ind. 380.

[63] Johnson v. Van Epps, 110 Ill. 551; Succession of Hearing, 26 La. Ann. 326; Langdon v. Union Mut. Life Ins. Co., 14 Fed. Rep. 272; Valton v. Nat., etc. Co., 20 N. Y. 32.

[64] Ætna Life Ins. Co. v. France, 94 U. S. 561; St. John v. Am. Mut. Life Ins. Co., 13 N. Y. 31.

[65] Bevin v. Conn., etc. Ins. Co., 23 Conn. 244; Reese v. Mut., etc. Ins Co., 23 N. Y. 516; Guardian Ins. Co. v. Hogan, 80 Ill. 36; Franklin Ins. Co. v. Sefton, 53 Ind. 380. But see Trenton, etc. Ins. Co. v. Johnson, 24 N. J. L. 576.

[66] Conn. Mut. Life Ins. Co. v. Schæfer, 94 U. S. 457;

surance would be a mere wager and void.[67] But this interest need not be strictly legal or definite, any substantial pecuniary interest is sufficient.[68] Thus,—

Of Sister in Life of Brother.—A sister dependent upon a brother for support has an interest in his life which she may insure;[69] and probably this principle would extend to the interest of all persons in the lives of those upon whom they are dependent for comfort and support.

Of Parent in Life of Child.—A parent, according to very good authorities, has an insurable interest in the life of a child by reason of such relationship merely,[70] but, whether this be so or not, as the father is entitled to the services of the child until he attains majority, he has, beyond dispute, an insurable interest in his life until he reaches that age.[71]

Of Child in Life of Parent.—The relation of parent and child has been held sufficient to establish an insurable interest of the child in the life of the parent,[72] but this principle is also denied;[73] and it is next to needless to add that a son-in-law has no insurable interest in the life of the mother-in-law.[74]

Of Husband and Wife.—Husband[75] and wife[76] have each an insurable interest in the life of the other, by reason of the relation. And it is deemed as coming within this principle where a man and woman live together as husband and wife for a long term of years without any marriage ceremony ever having been performed.[77] Indeed, the Missouri court goes still further, holding that a woman engaged to be married has an insurable interest in the prospective husband's life.[78]

Of Uncle and Nephew.—The mere relation of uncle and nephew does not constitute an insurable interest, to enable either to insure the life of the other.[79]

Of Employer and Employee.—An employer has an insurable interest in the life of his employee;[80] and, on the other hand, an employee, hired for a fixed term, has an insurable interest in the life of his employer.[81]

Of Partner in Life of Co-partner.—A partner has an insurable interest in the life of his co-partner;[82] at any rate it was so held in a case where one of two co-partners advanced the capital of the other, the agreement being that each should contribute an equal amount.[83]

Of Creditor in Life of Debtor.—Though the existence of the relation of debtor and creditor is not essential to an insurable interest,[84] the interest of a creditor in the life of the debtor is insurable,[85] even though the debtor be an infant;[86] and this insurable interest of the creditor continues, although the statute of limitations would have barred his action before the debtor's death, if it had been pleaded.[87]

This principle, too, gives a creditor of a firm the right to insure the life of one of the partners thereof, even though another partner may be entirely able to pay the debt, and

Sides v. Knickerbocker Life Ins. Co., 16 Fed. Rep. 650; Trenton, etc. Ins. Co. v. Johnson, 24 N. J. L. 576.

[67] Mut. Benefit Assn. v. Hoyt, 46 Mich. 473.

[68] Hoyt v. N. Y., etc. Ins. Co., 3 Bosw. 440.

[69] Lord v. Dall, 12 Mass. 115.

[70] Grattan v. National Life Ins. Co., 15 Hun. 74. In this case it is said that if such relation of consanguinity or affinity is shown as warrants the conclusion that the beneficiary had an interest, whether pecuniary or arising from dependence or natural affection, in the life of the person insured, such interest will uphold the policy. And in Loomis v. Eagle Ins. Co., 6 Gray, 396, the court say, we cannot doubt that a parent has an interest in the life of a child and *vice versa* a child in the life of a parent, not merely because they are bound to support their lineal kindred when in need of relief, but upon considerations of strong morals and the force of natural affections between near kindred, operating more efficaciously than those of positive law.

[71] Mitchell v. Union, etc. Ins. Co., 45 Me. 104.

[72] Reserve Mut. Ins. Co. v. Kane, 81 Pa. St. 154. And see Loomis v. Co., *supra*.

[73] Guardian Mut. Life Ins. Co. v. Hogan, 80 Ill. 35.

[74] Rombach v. Piedmont & Arlington Life Ins. Co., 35 La. Ann. 233; s. c., 48 Am. Rep. 239.

[75] Currier v. Continental Life Ins. Co., 57 Vt. 496; s. c., 52 Am. Rep. 134.

[76] McKee v. Phœnix Ins. Co., 28 Mo. 383.

[77] Watson v. Centennial Mut. Life Assn., 21 Fed. Rep. 698; Equitable Assn. Soc. v. Patterson, 41 Ga. 338.

[78] Chisholm v. National, etc. Life Ins. Co., 52 Mo. 213.

[79] Singleton v. St. Louis Mut. Ins. Co., 66 Mo. 63.

[80] Miller v. Eagle Ins. Co., 2 E. D. Smith (N. Y.), 268.

[81] Hebdon v. West, 3 Best & Sn. 578.

[82] See Valton v. Nat. Loan Fund Assn. Soc., 20 N. Y. 32.

[83] Connecticut Mut. Life Ins. Co. v. Luchs, 108 U. S. 498.

[84] Hoyt v. N. Y., etc. Ins. Co., 3 Bosw. 440.

[85] Succession of Hearing, 26 La. Ann., 326; Bevin v. Conn. Ins. Co., 23 Conn. 244; Morrell v. Trenton Ins. Co., 10 Cush. 282.

[86] Rivers v. Gregg, 5 Rich. Eq. 274.

[87] Rowls v. American, etc. Ins. Co., 37 N. Y. 282; Mowry v. Home Ins. Co., 9 R. I. 346.

the estate of the insured perfectly solvent.[88]

Of Assignee of Policy.—An assignee of a life policy, as well as the original beneficiary, must have an interest in the life insured.[89]

Interest of Insured Need Not Be Disclosed.—It is now almost invariably stipulated that if the interest of the assured or beneficiary in the subject-matter be not truly stated in the policy the same shall be void; but in the absence of such a stipulation, it is, in general, sufficient that the subject-matter of insurance, and the nature of the risk, are set forth in the policy, without any representation of the nature or extent of the interest of the assured; and in case of loss, he will be entitled to recover, upon proof of any insurable interest in the property, or life, covered by the policy.[90]

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Akron, Ohio.

[88] Morrell v. Trenton, etc. Ins. Co., 10 Cush. 282.

[89] Missouri Valley Life Ins. Co. v. Sturges, 18 Kan. 93; Franklin Ins. Co. v. Sefton, 53 Ind. 380.

[90] Hartford Protection Ins. Co. v. Harmer, 2 Ohio St. 452; Strong v. Manufacturers' Ins. Co., 10 Pick. 40; Fletcher v. Com. Ins. Co., 18 Pick. 419; Tyler v. Ætna Ins. Co., 12 Wend. 507; Smith v. Bowditch, 6 Cush. 448; Turner v. Burrows, 5 Wend. 546; Lock v. N. A. Ins. Co., 13 Mass. 61.

WRITTEN OBLIGATIONS—PAROL EVIDENCE—SEVERAL AGREEMENTS — CONSTRUCTION OF.

CARR, ADM'R. V. HAYS.

Supreme Court of Indiana, March 19, 1887.

1. Obligations which parties have deliberately entered into cannot be pared down, taken away or enlarged by parol evidence.

2. Parol evidence is not admissible to show the consideration of a deed when the same is specifically set forth in the deed or in a contemporaneous instrument of writing.

3. Several agreements or instruments of writing executed on the same day, each as the consideration for the execution of the other, constitutes parts of one and the same transaction, and form one and the same contract, and are to be so construed.

4. A deed of conveyance and a written contract, assuming an incumbrance on the premises and executed at the same time, will be treated as one contract.

5. A verbal agreement, made at the same time between the grantor and grantee that, as a part of the consideration for said conveyance, the grantor should remain in possession for a certain time, and be allowed to pasture cattle thereon, is not admissible to vary or contradict or control the written contract.

6. Such a verbal agreement is not collateral to, or ndependent of, the written one.

7. Where a contract is not averred to be in writing, it will be presumed to be in parol.

8. Where several demurrers to different paragraphs in a pleading have been erroneously overruled, the judgment will be reversed, although there may have been one good paragraph, unless it clearly appears that such judgment was rendered exclusively on such good paragraph.

HOWK, J., delivered the opinion of the court:

In this case errors are assigned here by appellant, the defendant below, which call in question the overruling (1) of his separate demurrers to each of the first, second and third paragraphs of appellee's claim or complaint, and (2) of his motion for a new trial. These errors we will consider in the order of their statement, and decide the several questions thereby presented and discussed by appellant's counsel in their brief of this cause.

1. In the first paragraph of his claim or complaint, appellee alleges that, in 1878, Benjamin D. Pettit died intestate in White county Indiana, and that, about 1880, appellant Carr became, and since had been, and then was, the sole administrator of such decedent's estate; that on the 13th day of September, 1876, appellee and his wife conveyed, by warranty deed, to said Benjamin D. Pettit, then in full life, certain lands particularly described, in White county, containing 511½ acres, and of the value of $30,000, the consideration expressed in such deed having been, however, only $25,890; that on the day last named, in consideration of the execution and delivery to him of the aforesaid deed, said Benjamin D. Pettit agreed to and with appellee and his wife to pay the sum of $21,081, in the aggregate, to certain individuals and banking corporations, and relieve appellee of any and all liability upon the same; that, in addition to the payment of such sums of money, said Benjamin D. Pettit also agreed to insure to appellee the undisturbed and quiet possession of all of such lands for at least three years from said 13th day of September, 1876, and that he would supply appellee with 600 head of yearling steer cattle, to be grazed and matured on such lands, and on other lands then in appellee's control, and that, at the end of such three years, the said Pettit was to reconvey to appellee, upon the payment of such sum of $21,081, with the interest, all lands described in such deed. And appellee averred, that said Benjamin D. Pettit violated all the terms and conditions upon which such conveyance was made, in all of their essential particulars; that, instead of paying off the sums of money he agreed and covenanted with appellee to pay off, he suffered judgment to be taken against appellee, and execution to issue for the possession of such lands, soon after he took such deed, and a long time prior to the time when appellee, under his covenant, was to yield up the possession of such lands; that said Pettit became an active participant in such suit for possession of such lands, by the employment of able counsel to prosecute

the same against appellee; that, instead of protecting appellee in the peace and quiet of his former possession, he proceeded to and did covenant with Alice L. and David Elliott, and Kittie and John McCoy, who were the legal heirs of one John Richey, the holders at that date of a certain mortgage against such lands, amounting then to the sum of $14,000, which sum is one of the several sums assumed by said Pettit to pay immediately upon his taking of such deed for said lands; which sum and indebtedness said Pettit did not pay, but fraudulently sought to obtain title to all of such lands, and avoid the solemn covenants under which he obtained his deed from appellee and wife, by procuring or permitting the sales of such lands under a decree of foreclosure, and a certificate of purchase from the sheriff of such county to issue to said Elliotts and McCoys for all of such lands, and, at the same time, contracting and colluding with them, said Elliotts and McCoys, and one Wilstach, to possess him, said Pettit, of such lands, and thereby evade the terms and conditions under which he took title to such lands from appellee and wife. Appellee further averred that, in pursuance of such fraudulent collusion upon the part of said Pettit, he (appellee) had been dispossessed of all such lands, and that said Pettit's legal representatives then held such possession; that no money or other consideration had been paid appellee for such described lands then held by said Pettit's estate; that there was then due appellee from such estate, as damages from the breach of said Pettit's contract, the sum of $25,000, and for the unpaid purchase money of such lands the further sum of $25,891, with the legal interest thereon. Wherefore, etc.

After the court below had sustained appellant's motion to strike out a certain portion of the second paragraph of appellee's claim, there was no substantial difference between this paragraph and the third paragraph of such claim or complaint.

The material facts averred in the second and third paragraphs of appellee's claim are that on September 13, 1876, appellee was the owner of 511 1-2 acres of land, particularly described in White county, which lands he and his wife, on the day last named, conveyed by their warranty deed to Benjamin D. Pettit, then in full life, but since deceased; that on the same day, in consideration of the execution to him of such conveyance to him, said Pettit executed to appellee a written contract, of which the following is a copy:

"BROOKSTON, September 13, 1876.

"I hereby assume and agree to pay the sum of twenty-one thousand and eighty-one dollars, as follows, to-wit: The sum of fourteen thousand dollars to the heirs of John Richey, deceased; thirty-seven hundred and seventy-five dollars to the Second National Bank of La Fayette, Indiana; fifteen hundred and six dollars to the La Fayette Savings Bank; and eighteen hundred dollars to George Chamberlain. Should Cormacan Hays pay me the above amounts, with the interest thereon at the rate of ten per cent. per annum, within three years from this date, or cause the same to be paid, then I bind myself, my heirs and administrators, to make the said Cormacan Hays a good and sufficient deed to a certain tract of real estate contained in a deed of said Hays to Benjamin D. Pettit, dated August 1, 1876.

[Signed] "B. D. PETTIT."

It was further alleged that the sums mentioned in such written contract were debts of appellee; that the sum to be paid the heirs of John Richey was secured by a mortgage; that the residue of such debts were evidenced by promissory notes signed by appellee, with said Pettit as security thereon; that, as a further consideration for such deed by appellee and wife, and as an inducement to appellee to execute such deed and accept such written contract, said Pettit verbally agreed with appellee that he should continue to occupy and have the use and enjoyment of the lands so conveyed for the full term of three years from September 1, 1876, and that, within a reasonable time thereafter, he, said Pettit, would furnish to appellee five hundred yearling steers, to be kept by him three years on the lands so conveyed, and other lands then under appellee's control; that appellee should have the absolute control of such lands and such steers during said three years, and that appellee should mortgage said steers as fast as furnished to secure the repayment of the money expended by said Pettit in their purchase, with interest at the rate of ten per cent. per annum at the expiration of such three years; and that whatever should be realized upon the sale of said steers when matured and sold, over the amount of their purchase money and such interest, should be the money of the appellee, as a compensation for his care and management of such lands, etc. Appellee further averred that said Pettit allowed such lands to be sold on a decree of foreclosure of the Richey mortgage, and to be purchased at sheriff's sale pursuant to such decree, by Alice L. Elliott and Kittie McCoy, within less than six months after such lands were conveyed to said Pettit; that said Pettit procured a conveyance of such lands on said sale to be made to John A. Wilstach, in trust for said Elliott and McCoy, and caused said Wilstach, by suit, to dispossess appellee of such lands within eighteen months of the time they were so conveyed to said Pettit; that appellee was deprived of the use and enjoyment of such lands, and was at great expense in the payment of costs and attorney's fees in making his defense of such possession; that said Pettit did not furnish said five hundred yearling steers to appellee; and that, by reason of said Pettit's failure to furnish said steers, and to secure to appellee possession of such lands, he had been damaged, etc.

It is apparent, from the foregoing summary of the second and third paragraphs of the claim or complaint herein, that the appellee has counted in each of such paragraphs exclusively upon the

verbal contract of Benjamin D. Pettit, and has sought therein to recover damages for Pettit's alleged breach of such verbal contract. Under the averments of these paragraphs of complaint, the warranty deed of appellee to Pettit, and the written contract given by Pettit to appellee, were both executed on the same day, each as the consideration for the execution of the other, they both constituted parts of one and the same transaction and together they formed one and the same contract. In this contract, all oral negotiations and verbal agreements, precedent or concurrent, by or between the parties in relation to the subject-matter of such contract, were completely merged; and the two parts of such contract—appellee's deed and the writing executed by Pettit in consideration of such deed—became and were the exclusive evidence of the only covenants and agreements of or concerning the subject-matter of such contract, by which the respective parties ultimately bound themselves. This, we think, is the law of this State in relation to the matter we are now considering. Ice v. Ball, 102 Ind. 42, 1 N. E. Rep. 65; Brown v. Russell, 105 Ind. 46, 4 N. E. Rep. 428; Singer, etc. Co. v. Forsyth, 108 Ind. 234, 9 N. E. Rep. 372.

In the case last cited the court said: "The rule that a formal written contract, which appears to be complete, will be presumed to be the repository of the final intention of the parties in regard to the subject-matter of the agreement, and that it excludes proof of any prior or contemporaneous parol stipulations which would contradict the writing, is abundantly settled, and should not, on account of its importance, be relaxed in any degree. * * * Obligations which parties have deliberately entered into, and put in writing, cannot, therefore, be pared down, taken away, or enlarged by parol evidence."

In the case under consideration, the parties to the contract finally agreed upon, Benjamin D. Pettit, as well as Cormacan Hays, each for himself, reduced to writing and subscribed the covenants and agreements whereunto he ultimately bound himself, as his part of their mutual contract. In the second and third paragraphs of his claim or complaint, after stating that Pettit's written contract of assumption was the consideration for his deed, appellee alleged that, as a further consideration for such deed, and as an inducement to appellee's execution of such deed, and his acceptance of Pettit's written contract, said Pettit verbally agreed with appellee that he should occupy, use, and enjoy the lands so conveyed for the full term of three years from September 1, 1876, and that he (Pettit) would furnish to appellee five hundred yearling steers, etc. This verbal agreement is the foundation of appellee's cause of action herein, and, under our decisions, it must be held, we think, that this verbal contract was so far merged in the written instruments executed by the parties as to render it inoperative, of no binding obligation, and incapable of enforcement in law or in equity.

It is claimed, however, by appellee's counsel, that the alleged verbal contract of Pettit is collateral to, independent of, and entirely consistent with, the written contract of the parties, as evidenced by appellee's deed and Pettit's written contract of assumption, and in support of their position counsel refer us to and rely upon Welz v. Rhodius, 87 Ind. 1, and the authorities there cited. This claim of counsel is manifestly inconsistent, and directly at variance with the averments of the second and third paragraphs of appellee's claim or complaint. In each of these paragraphs it was alleged, as we have seen, that Petit's verbal contract was made as a further consideration for, and as an inducement to, the execution of appellee's deed. These averments being true, it cannot be correctly said that such verbal contract was, in any legal sense, collateral to appellee's deed or Pettit's written contract of assumption, which together constituted their contract. It is well settled by our decisions that such a contract cannot be controlled, diminished, or enlarged by any precedent or contemporaneous verbal agreement by or between the parties, in relation to the subject-matter of the written contract. McDonald v. Elfes, 61 Ind. 279, and cases cited; Walterhouse v. Garrard, 70 Ind. 400; Clodfelter v. Hulett, 72 Ind. 137.

We are of opinion, for the reasons given, that the court below erred in overruling appellant's demurrer to the second and third paragraphs of appellee's claim or complaint.

It will be seen, from our statement of the substance of the first paragraph of complaint, that it was not averred in such paragraph that the agreement of Benjamin D. Pettit therein upon, or any part thereof, was in writing. In the absence of such an averment, it must be assumed that the entire agreement of Pettit declared upon in such first paragraph was the oral or verbal agreement of Pettit, and that no part thereof was in writing. This is settled by our decisions. Langford v. Freeman, 60 Ind. 46; Goodrich v. Johnson, 66 Ind. 258; Ice v. Ball, *supra*.

The entire agreement of Pettit, as stated in the first paragrah of complaint, rested in parol, and therefore what we have said, in considering the sufficiency of the second and third paragraphs, can have no application to such first paragraph. Appellant's learned counsel have failed to point out any valid objection, and we cannot see any such objection to the sufficiency of the first paragraph of complaint; and therefore we hold that the demurrer to this first paragraph was correctly overruled.

After appellant's demurrers to each paragraph of appellee's claim or complaint were overruled by the court, issue was joined by appellant's answer in general denial. The case was tried by the court, and a finding was made for appellee, the claimant or plaintiff below; and, over appellant's motion for a new trial, the court rendered judgment on its finding. It is fairly shown by the record of this cause that the finding and judg-

ment of the trial court can only be rested upon the second and third paragraphs of the claim or complaint herein. Certainly, we cannot say from the record that the finding and judgment herein were made and rendered wholly and exclusive upon the first paragraph of such claim or complaint. But, as we have seen, the second and third paragraphs, which are clearly bad, were held good below upon appellant's demurrers thereto, and the rulings on such demurrers were assigned here as errors. In such a case, it is settled by our decisions that the judgment below must be reversed. Evansville, etc., Co. v. Wildman, 63 Ind. 370; Pennsylvania Co. v. Holderman, 69 Ind. 18; Ethel v. Batchelder, 90 Ind. 520; City of Logansport v. La Rose, 99 Ind. 117.

The judgment is reversed, with costs, and the cause is remanded, with intstructions to sustain the demurrers to the second and third paragraphs of the claim or complaint, and for further proceedings not inconsistent with this opinion.

NOTE.—The principal case involves an application of the old and well settled rule, that the obligations of parties deliberately entered into and put into writing cannot be pared down, taken away, or enlarged by parol evidence. Upon this subject I can do no better then quote the rule with its exceptions as laid by Justice Stephen's, in his most excellent volume on the rules of evidence.[1]

"When any judgment of any court or any other judicial or official proceeding, or any contract or grant, or any other disposition of property, has been reduced to the form of a document or series of documents, no evidence may be given of such judgment or proceeding, or of the terms of such contract, grant or other disposition of property, except the document itself, or secondary evidence of its contents in cases which secondary evidence is admissible under the provisions hereinbefore given. Nor can the contents of any such document be contradicted, altered, added to, or varied by oral evidence.[2] Provided that any of the following matters may be proved:

1. Fraud, intimidation, illegality, want of due execution, want of contracting capacity in any contracting party, the fact that it is wrongly dated,[3] want of failure of consideration, or mistake in fact or law,[4] or any other matter which, if proved, would produce any effect upon the validity of any document[5] or of any part of it, or which would entitle any person to any judgment, decree, or order relating thereto.

2. The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, if, from the circumstances of the case, the court infers that the parties did not intend the document to be a complete and final statement of the whole of the transaction between them.[6]

3. The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under such contract, grant or disposition of property.[7]

4. The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, provided that such agreement is not invalid under the statute of frauds or otherwise.[8]

5. Any usage or customs by which incidents not expressly mentioned in any contract are annexed to contracts of that description; unless the annexing of such incident to such contract would be repugnant to or inconsistent with the express terms of the contract.[9]

Oral evidence of a transaction is not excluded by the fact that a documentary memorandum of it was made, if such memorandum was not intended to have the legal effect as a contract, or other disposition of property.[10]

Oral evidence of the existence of a legal relation is not excluded by the fact that it has been created by a document, when the fact to be proved is the existence of the relationship itself, and not the terms on which it was established or is carried on.[11]

The fact that a person holds a public office need not be proved by the production of his written or sealed appointment thereto, if he is shown to have acted on it."[12]

As a reason for the rule, Lord Coke says that, "It would be inconvenient that matters in writing, made by advice and on consideration, and which finally import the certain truth of the agreement between the parties, to be proved by the uncertain testimony of slippery memory, and it would be dangerous to purchasers and farmers and all others, in such case, if nude averments against matter in writing should be admitted.[13]

The rule has, however, no application to a case in which it appears from the writing itself that it does not contain the whole agreement between the parties, nor does it operate to exclude proof of collateral or superadded agreements, provided the agreements so sought to be proved be not consistent with the writing.[14]

In Holcomb v. Munson,[15] it was held that a written contract for the purchase of charcoal, delivered at the purchaser's cars, to be paid for at the rate of $12 per hundred bushels, on the 15th of each month after the delivery, is a complete contract and no additional evidence is needed to make it plain; and parol evidence to show the amount of coal to be delivered is incompetent as modifying a written contract.

1 Stephens' Digest of Evidence, art 90.

2 Mott v. Richtmyer, 57 N. Y. 49; Martin v. Cole, 104 U. S. 30; Black v. Bachelder, 120 Mass. 171; Martin v. Berens, 67 Pa. St. 459; Naumburg v. Young, 44 N. J. L. 331.

3 Shaugnessy v. Lewis, 130 Mass. 355; Barnett v. Abbott, 73 Vt. 120.

4 Paine v. Upton, 87 N. Y. 327.

5 Sherman v. Wilder, 106 Mass. 537.

6 Green v. Randell, 51 Vt. 67; Bradshaw v. Combs, 102 Ill. 428; Bradstret v. Rich, 72 Me. 233; Vanbrunt v. Day, 81 N. Y. 251.

7 Wilson v. Powers, 131 Mass. 539; Wellniger v. Smith, 75 Va. 309; Westman v. Krumweide, 30 Minn. 313; Nichels v. Olmstead, 14 Fed. Rep. 219.

8 Kennebec Co. v. Augusta Ins. Co., 6 Gray, 207; Pratt v. United States, 22 Wall. 496; Allen v. Sowerby, 37 Md. 410.

9 Walls v. Bailey, 49 N. Y. 464; Barnard v. Kellog, 10 Wall. 383; Page v. Cole, 120 Mass. 37; Burger v. Ins. Co., 71 Pa. St. 422.

10 Irwin v. Thompson, 27 Kan. 643, Perrine v. Cooley, 39 N. J. L. 449; Thomas v. Nelson, 69 N. Y. 118.

11 Widdefield v. Widdefield, 2 Ainn. 245; Cutler v. Thomas, 25 Vt. 73; Supples v. Lewis, 37 Conn. 568; Klein v. Russell, 19 Wall. 433.

12 Golder v. Bressler, 105 Ill. 428; Lucier v. Pierce, 60 N. 13; Com. v. Kane, 108 Mass. 423.

13 Rutland's Case, 5 Coke, 26.

14 Chapman v. Dobson, 78 N. Y. 74; Erghine v. Taylor, 98 N. Y. 288; Jones' Com. Cent. 188-198.

15 9 N. E. Rep. 443 (N. Y., 1886).

In Moot v. Richmyer,[16] it was said that it is a familiar rule of evidence that a written contract cannot be explained, modified or contradicted, either as to its express or implied term, by parol evidence; and it is immaterial whether the proposed parol modification purported to have been made before, at the time of, or after the execution of the instrument.

In Singer Manufacturing Co. v. Forsythe[17] *et al.*, in an action for breach of the bond of an agent, it was held that it was incompetent and improper for the defendant to show a parol contemporaneous agreement, forming the consideration of the bond, where the bond fails to state any consideration, and indicates on its face that it is collateral to some not expressed therein; and the extent of the liability of the guarantors may be thus limited to indebtedness incurred as to matters contemplated in such agreement, although the bond, if constructed alone, might seem to include all indebtedness.

In Graffam v. Pierce,[18] it was held in an action on an oral agreement for the conveyance of certain real estate, and for the leas eof a hall by the defendant to the plaintiff, the defendant agreeing to put into the hall a hard pine floor, where the statute of frauds is not pleaded, and it appears that the deeds and lease have been executed, and that the lease contains no allusion to the agreement as to the floor, parol evidence is admissible to show it.

Where only part of the contract is reduced to writing, parol evidence is admissible to prove the portion which the parties have permitted to rest in parol;[19] but it must appear from the writing itself that it does not contain the entire agreement.[20]

In Remington v. Wright,[21] it was held that proof of a parol contemporaneous promise on the part of the payees of a promissory note that the wife should not be called on to pay the note is not admissible in evidence.

Parol evidence may be heard as to an independent collateral agreement, or where there has been a parol agreement and a part only has been reduced to writing, the whole contract may be proved, but in neither case is the writing to be contradicted.[22]

Parol Evidence to Show the Consideration of a Deed.—It is an exception to the general rule, that parol evidence cannot be introduced to vary, modify, or contradict a written contract, which allows parol evidence to be introduced to show the true consideration of a deed. But the exception will not allow this to be done unless that which it is attempted to show is consistent with the consideration stated in the deed. The law was settled years ago when it was stated by the lord chancellor, in Clifford v. Turrill,[23] where he says: "It was said that the plaintiff could not go out of the deed to prove that there was other consideration for the assignment than that stated in the deed. Now, the settled rule of law is, that you may go out of the deed to prove a consideration that stands well with that stated on the face of the deed, but you cannot be allowed to prove a consideration inconsistent with it."

In Bever v. North,[24] it was said that the exception to the general rule does not permit the introduction of parol evidence to defeat the operation of the deed by rendering nugatory the words of conveyance which it contains and a grantor cannot under the guise of proving the consideration of a deed prove that it was not to operate a conveyance. For the general rule is that all preliminary negotiations are merged in the deed.

In Kickland v. Menasha Woodenware Co.,[25] it was said that it seems to be well settled that it is competent to prove by parol what the real consideration agreed to be paid was, and to show that the same or some part of it remains unpaid, though not thereby to impeach the title conveyed by the deed.

In Shepherd v. Little,[26] Judge Spencer said that, "although you cannot by parol substantially vary or contradict a written contract, yet these principles are inapplicable to a case where the payment or amount of the consideration becomes a material inquiry."

In Wilkinson v. Scott,[27] it was held that the receipt or acknowledgment of the payment of the consideration in a deed was only *prima facie* or presumptive evidence of it, and was open to explanation by parol. The principal case places a limitation on the doctrine that parol evidence is admissible to show the true consideration of a deed and declares that such evidence is not admissible when the consideration is specifically set forth in writing either in the deed itself or in a contemporaneous written contract. The court cites no case in the support of its decision, and I have been unable to find any where the question has been decided.

In a case decided in the same court but a short time before the principal one was, it was said that it is an elementary doctrine that the consideration of a deed may be shown by parol, and it is impossible to give effect to this doctrine without permitting the parties to prove what agreements as to the consideration preceded the execution of the deed. The agreement as to the consideration necessarily precedes the execution of the deed, and the fact that the consideration was agreed upon some time prior to the delivery of the deed does not preclude the grantor from showing what constituted the consideration of the deed. To hold otherwise would be to run counter to the rudimentary doctrine that it is always competent to prove the actual consideration yielded for the conveyance of land.

With a few exceptions the rule is that the preliminary negotiation are merged in the deed. This doctrine, however, does not apply to the consideration, *except perhaps where the deed specifically set forth the consideration.* Where the consideration is merely stated in general terms the doctrine does not apply."[28]

In a case decided a month later by the same court, language of a similar import is made use of.[29]

Springfield, Ohio. WM. M. ROCKEL.

16 57 N. Y. 50.
17 9 N. E. Rep. 372 (Ind. 1886).
18 9 N. E. Rep. 819 (Mass., 1887).
19 Hubbard v. Marshall (Wis.), 6 N. W. Rep. 497.
20 Hel v. Heller (Wis.), 10 N. W. Rep. 620; Dixon v. Blondin (Vt.), 5 Atl. Rep. 514.
21 48 N. J. L. 451; Courtright v. Burns (U. S. C. C. 1882), 14 Cent. L. J. 89.
22 Stewart v. Phœnix Ins. Co. (Tenn., 1882), 14 Cent. L. J. 432.
23 9 Jurist. pt. 1, p. 633; Vail v. Millan, 17 Ohio St. 622.
24 8 N. E. Rep. 576 (Ind., Oct., 1886); Grout v. Townsend, 2 Denio, 336; Belden v. Seymour, 8 Conn. 304; Beach v. Rockford, 10 Vt. 96.
25 31 N. W. Rep. 472 (Wis., 1887); 3 Washb. on Real Prop. (3d ed.) 327; Kimball v. Walker, 30 Ill. 510.
26 14 Johns. 210.
27 17 Mass. 249; 2 Phil. on Ev. 655, cases cited in note 2; Patric v. Leach, 2 Ped. Rep. 120; Keith v. Briggs (Minn., 1884), 20 N. W. Rep. 91; Dean v. Adams (Mich., 1880), 6 N. W. Rep. 229; Hubbard v. Marshall (Wis., 1880), 6 N. W. Rep. 497; Strohauer v. Voltz (Mich., 1886), 4 N. W. Rep. 161; Anthony v. Chapman (Cal., 1884), 2 Pac. Rep. 889.
28 Hays v. Peck (Ind., 1886), 8 N. E. Rep. 274.
29 Bever v. North (Ind., 1886); 8 N. E. Rep. 576.

WEEKLY DIGEST

Of ALL the Current Opinions of all the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States.

1. ADMIRALTY—Pleadings — Traverse.——An answer in admiralty must admit or deny each allegation of the libel. An omission of notice does not admit an allegation.—*Street v. Ashley P. Co.*, U. S. D. C. (Car.), March 31, 1887; 30 Fed. Rep. 699.

2. APPEAL—Assignment of Errors—Examination.——The appellate court will only consider questions presented in the assignment of errors and argued in the briefs, but will examine the entire record, if necessary, to arrive at a proper conclusion.—*Cawger v. Land*, S. C. Ind., May 12, 1887; 12 N. E. Rep. 96.

3. APPEAL—Judgment—Payment.——An acceptance of payment of the judgment appealed from bars the appeal.—*State v. Kamp*, S. C. Ind., May 19, 1887; 11 N. E. Rep. 960.

4. APPEAL—Jurisdiction—Amount.——Where a plea of *res adjudicata* is sustained, the right of appeal is not lost, though the amount in controversy is thereby reduced to less than $2,000.—*Mehle v. Benoit*, S. C. La., May 9, 1887; 2 South. Rep. 201.

5. APPEAL—Jurisdiction—Fraudulent Conveyance.——When a creditor sues to set aside a deed as fraudulent as to him, and the defendant, by cross-bill, states the deed was to secure a debt to him in excess of the limit of an appealable judgment, and the judgment contains a provision for the redemption of such deed, the cause is appealable by the plaintiff.—*Lobstein v. Lehn*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 68.

6. APPEAL—Justice — Recovery of Premises.——An allegation, that defendant is in possession of the premises without warrant or authority of law, charges that he is a trespasser, and an appeal will lie from the justice of the peace to the circuit court.—*Moultrie v. Dixon*, S. C. S. Car., March 17, 1887; 2 S. E. Rep. 24.

7. APPEAL—New Trial—Exceptions.——A trial court may grant a new trial without any exceptions being taken, but the appellate court cannot consider an objection not based on an exception.—*Schwinger v. Raymond*, N. Y. Ct. App., April 19, 1887; 11 N. E. Rep. 952.

8. APPEAL—Review—Ejectment.——When, in a case of ejectment, the defendant relied on the statute of limitations, and the grounds for the decision in the defendant's favor are not shown, the fact that defendant did not raise the question of plaintiff's title will not prevent an affirmance of the judgment.—*Agnew v. Perry*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 70.

9. APPEAL—Second Review ——When, on appeal, the court affirms the decree in partition partly, and reverses it as to the other points, and the lower court acts accordingly, the matter is *res adjudicata* on a second appeal.—*Osburn v. McCartney*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 72.

10. APPEAL—Tax-titles—Setting Aside.——Where a tax-deed is conceded to be void, and by decree it is set aside upon repayment of the money paid with interest, an appeal will not lie to the supreme court, merely because the complainant was not ordered also to pay the penalties provided in the revenue act.—*Westcott v. Kinney*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 81.

11. APPEAL—Trial by Judge—Estimate of Damages.——In an action for damages tried by the judge, it is error for him to assess the damages by averaging the estimates of the opposing counsel, on the ground that the evidence was so unintelligible and confused that a true estimate could not be made, and the finding will be set aside on appeal.—*State v. Pacific G. Co.*, S. C. S. Car., March 29, 1887; 2 S. E. Rep. 265.

12. ASSIGNMENT—Chose in Action—Writing.——Under Georgia law, an assignment of a chose in action must be in writing.—*Mut. L. I. Co. v. Watson*, U. S. C. C. (Ga.), Feb. 23, 1887; 30 Fed. Rep. 653.

13. ASSIGNMENT—Part of Claim—Trustee Process.——Equity recognizes the validity of the assignment of a part of a claim, and the assignee can assert his rights in the trustee process.—*Horne v. Stevens*, S. J. C. Me., March 8, 1887; 9 Atl. Rep. 616.

14. ASSIGNMENT FOR CREDITORS—Partner—Preference.——In Missouri, a conveyance by a partner of his individual property to pay a firm debt, will not be affected by nor be considered a part of an assignment for the benefit of creditors, made by the firm a day or two later.—*Elgin Watch Co. v. Meyer*, U. S. C. C. (Mo.), April 22, 1887; 30 Fed. Rep. 659.

15. ASSIGNMENT FOR CREDITORS—Preferences.——An assignment for the benefit of creditors, conforming to the statute except in making some preferences, is good, but the preferences are void.—*Schwab v. Lemon*, S. C. Ind., May 17, 1887; 12 N. Rep. 87.

16. ASSIGNMENT FOR CREDITORS—Validity—Fraud.——The question whether a deed is fraudulent on its face must be determined by an inspection of the deed alone, and if it is fraudulent as to any provision it is fraudulent *in toto*, as to those entitled to take advantage of it. A provision in a deed of trust, that the trustee may sell the property at private sale, does not render the deed fraudulent on its face.—*Landeman v. Wilson*, S. C. App. W. Va., April 11, 1887; 2 S. E. Rep. 203.

17. ATTACHMENT—Fraudulent Conveyance—Burden of Proof.——When, in an attachment suit, the allegation is defrauding creditors and removal of property out of the State, and the plaintiff proves a fraudulent disposition of a part of his property, the burden is on the defendant to show he still has ample property in the State to pay his creditors.—*Picard v. Samuels*, S. C. Miss., May 23, 1887; 2 South. Rep. 250.

18. ATTACHMENT—Personal Judgment—Dismissal.——The taking of a personal judgment after a full appear-

ance, without any adjudication of an attachment brought at the institution of the suit, is a dismissal of the attachment.—*United States M. Co. v. Henderson*, S. C. Ind., May 12, 1887; 12 N. E. Rep. 88.

19. ATTACHMENT — Service — Jurisdiction.——An attachment in the United States circuit court is void, when the defendant is not served and cannot be found in the district, and it is not cured by his subsequent appearance in the case, and a claimant of the goods is entitled to set aside the attachment.—*Noyes v. Canada*, U. S. C. C. (Kan.), April 26, 1887; 30 Fed. Rep. 665.

20. ATTORNEY—District—Special Authority—Dismissal. ——An appeal, taken in a case by a county, will be dismissed at the request of the board of supervisors and the district attorney, notwithstanding the opposition of their special consent in the case.—*Allen v. County of San Bernardino*, S. C. Cal., June 4, 1887; 14 Pac. Rep. 18.

21. BAIL—Defense—Two Prosecutions.——When two prosecutions for unlawful cohabitation are instituted on one day, and the accused failed to appear at the trial in each case, the pendency of the first is no defense to a suit on the bail bond given in the second.—*U. S. v. Eldredge*, S. C. Utah, June 9, 1887; 14 Pac. Rep. 42.

22. BANKRUPTCY—Discharge — Judgment.——A discharge in bankruptcy is a bar to a judgment or a debt provable, and, in fact, proved under the bandruptcy.—*McDonald v. Davis*, N. Y. Ct. App., May 3, 1887; 12 N. E. Rep. 40.

23. BILLS AND NOTES—Acceptance in Advance—Equitable Assignment.——A drew a draft on B, and C received it on the strength of a letter from B to A to draw on him. *Held*, that the letter was equivalent to an acceptance of the draft, and as the draft was for the exact sum due by B to A, it was an equitable assignment of the fund to C, who could sue B thereon.—*Nimocks n. Woody*, S. C. N. Car., May 9, 1887; 2 S. E. Rep. 249.

24. BONDS—Official—Commissioner—Suit.—A suit on a commissioner's bond, given under the statute and made payable to the State, may be maintained by the party interested without making the State a party thereto.—*Brooks v. Miller*, S. C. App. W. Va., April 2, 1887; 2 S. E. Rep. 219.

25. BILLS AND NOTES—Covenant of Warranty—Cestui Que Trust.——When the purchasers of notes given for the purchase of land with covenants of warranty sue the payees thereon, such purchasers cannot claim a breach of warranty as to them, though the land was incumbered when sold, and they are not entitled to the possession thereof.—*Washington, etc. Bank, v. Thornton*, Va. Ct. App., April 14, 1887; 2 S. E. Rep. 193.

26. BONDS — Statutory Authority — Validity.——A bond given to obtain the transfer of a cause for the claim and delivery of property from a district court of the city of New York into the court of common pleas, is void, there being no statutory authority for such transfer.—*Mittnacht v. Kellerman*, N. Y. Ct. App., April 26, 1887; 12 N. E. Rep. 28.

27. CERTIORARI—Application—Affidavit — Record.—— On petition for *certiorari* to bring up an appeal not perfected in time, the court will not decide between conflicting affidavits nor consider agreements of counsel not in writing nor in the record.—*Short v. Sparrow*, S. C. N. Car., May 21, 1887; 2 S. E. Rep. 233.

28. CHATTEL MORTGAGE—Crops—Validity.——A cotton planter mortgaged his crop to be planted, and subsequently made two mortgages, one before and the other after it was sown for past and future advances. He afterwards sold part of the crop through a broker, and received the proceeds. The second mortgagees sued the broker for conversion. *Held*, that the second mortgagees had a title against all but the prior mortgagee, whose title the broker could not assert.—*Marks v. Robinson*, S. C. Ala., May 11, 1887; 2 South. Rep. 292.

29. CHATTEL MORTGAGES—Future Acquisitions.—— A mortgage of property to be acquired in the future is void as to creditors.—*Loth v. Carty*, Ky. Ct. App., May 12, 1887; 4 S. W. Rep. 314.

30. COMMON CARRIER—Bill of Lading—Liability.—— When the bill of lading stipulates that the goods are to be carried to the depot only, the carrier is not bound to make a personal delivery, but is liable for them at the depot as a warehouseman. — *Merchants D. & T. Co. v. Merriam*, S. C. Ind., May 10, 1887; 11 N. E. Rep. 954.

31. CONSTITUTIONAL LAW — Appropriations — Claims. ——An act to appropriate money to pay an indebtedness received under an act subsequently declared unconstitutional, is not itself unconstitutional.—*Miller v. Dunn*, S.C. Cal., June 6, 1887; 14 Pac. Rep. 27.

32. CONSTITUTIONAL LAW — Drainage — Assessments. ——A drainage law authorizing the county surveyor to repair drains and notify the county auditor of the expense of keeping them in repair, who shall assess the same on proprietors, which provides for notice and an appeal, is constitutional.—*Fires v. Brier*, S. C. Ind., May 18, 1887; 11 N. E. Rep. 958.

33. CONSTITUTIONAL LAW —Interstate Commerce Tax. ——A tax by a State of the gross receipts of a domestic corporation, which are denied from transportation of persons and property between different States and to and from foreign counties, is unconstitutional.—*Philadelphia, etc. Co. v. Pennsylvania*, U. S. S. C., May 27, 1887; 7 S. C. Rep. 1118.

34. CONSTITUTIONAL LAW—Sunday—Exemptions.—— The Sunday law is constitutional and was intended to operate uniformly every where. An exemption or exception must be strictly construed, and the party claiming it must prove it with certainty.—*State v. Fernandez*, S. C. La., April 25, 1887; 2 South. Rep. 233.

35. CONTRIBUTION — Contract — Equity. —— A party may have contribution under a contract between several to equally aid and take care of another person when sick. — *Odiome v. Moulton*, S. C. N. H., March 11, 1887; 9 Atl. Rep. 625.

36. CONTRACT — Storage — Factors. —— A contract made by commissions merchants for storage of cotton consigned to them during a certain period must be considered as made by them as principals, and not as agents for their consignors. — *Allen v. Steers*, S. C. La., April 25, 1887; 2 South. Rep. 199.

37. CONTRACT—Performance—Destruction.——Where one agrees to erect certain houses for another and to be paid as the work progresses, and before the completion of the houses they are destroyed by fire without the fault of either party, the contractor is not entitled to the balance of the contract price.—*Laning v. Rintles*, S. C. N. Car., May 16. 1887; 2 S. E. Rep. 252.

38. CONTRACT — Privity. ——When a party does some work in building a house, which were changes from a contract with the the builders, for which he said he would contract with the builders and would not contract with the owner, and the owner said he would insert the changes in the builder's contract, such party cannot sue the owner therefor.—*Dunning v. Thomas*, S. C. Colo., May 18, 1887; 14 Pac. Rep. 49.

39. COPYRIGHT—Painting—Copies.——The owner of a copyright painting can sell lithographic copies thereof, and can restrain others from copying those copies.—*Schumacher v. Schwenke*, U. S. C. C. (N. Y.), 1887; 30 Fed. Rep. 690.

40. CORPORATION — Contract — Estoppel.——A party sued for not performing his contract with a corporation is estopped to claim that the corporation has no existence.—*Fresno, etc. Co. v. Warner*, S. C. Cal., May 28, 1887; 14 Pac. Rep. 37.

41. CORPORATIONS —Transfer of Stock—Liability.—— When a corporation informs others that a holder of its stock can transfer the same and makes the transfer, although the transfer to the holder was made under order of court and the holder only had a life-estate acquired under a will, and both the certificate and the stub-book showed that he held as divisee under the will, the company is liable to the remainder man for the value of the stock at the time of the death of the life-tenant.—*Caulkins v. Memphis, etc. Co.*, S. C. Tenn., April 26, 1887; 4 S. W. Rep. 287.

42. COSTS — Taxation—Record.——When a court has taken action in a case, or its officers have performed services therein, the court records should show jurisdiction by the court and regularity of the proceedings. —*Blain v. Home Ins. Co.*, U. S. C C. (Ga.), Jan. 29, 1887; 30 Fed. Rep. 667.

43. COURTS—Jurisdiction—Damages.——In actions of trespass *quare clausum* the *ad damnum* in the wait determines the sum in demand as to jurisdiction, under Vermont laws.—*Smith v. Fitzgerald*, S. C. Vt., June 3, 1887; 9 Atl. Rep. 604.

44. COUNTIES — Treasurer — Fees—Injunction.——An injunction will lie at the suit of a tax-payer of a town to prevent the county treasurer from allowing himself the fees for striking off lands to a town at a sale for taxes without a previous audit of his claim.—*Warren v. Baldwin*, N. Y. Ct. App., May 10, 1887; 12 N. E. Rep. 49.

45. CRIMINAL LAW—Arson—Combination—Instruction. ——In a case of arson, where, owing to the bad conduct of the defendants, the owners ran out of their house, which immediately thereafter burned up, an instruction that if the defendants went to the house to do an unlawful thing, and in the prosecution thereof as a consequence the house burned up, the defendants are guilty, though they had no intention of burning the house, is correct.—*Lusk v. State*, S. C. Miss., May 24, 1887; 2 South. Rep. 257.

46. CRIMINAL LAW—Assault and Battery—Indictment. ——When an indictment charges an assault with the intent feloniously, wilfully and of malice aforethought to kill and murder, it need not charge the assault to have been made feloniously.—*Wood v. State*, S. C. Miss., May 16, 1887; 2 South. Rep. 247.

47. CRIMINAL LAW — Autrefois Convict. —— When a jury in a criminal case has rendered an improper verdict, which is set aside on motion for a new trial and in arrest of judgment, the accused cannot plead to a new trial *autrefois convict.*— *State v. Oliver*, S. C. La., April 11, 1887; 2 South. Rep. 194.

48. CRIMINAL LAW —Forgery—Similar Name.——One may be guilty of forgery if he fraudulently signs his name, though his name is identical with that of the proper party, and his presentation of the order before the paying official and his signing the same there is a fraudulent act.—*U. S. v. Long*, U. S. C. C. (Ga.), Feb. 5, 1887; 30 Fed. Rep. 678.

49. CRIMINAL LAW—Indictment—Amendment—Intent. ——Under Mississippi law, an amendment may be made in an indictment for criminal trespass by substituting the name of the real owner for that of the agent. Defendant's belief in his right to enter is no defense to an indictment for criminal trespass.—*Knight v. State*, S. C. Miss., May 23, 1887; 2 South. Rep. 252.

50. CRIMINAL LAW — Indictment—Schools.——An indictment of the prudential school committee for wilfully neglecting to give the district clerk the warrant for the annual meeting with the affidavit of posting, must allege that the warrant was duly issued and reasonably posted.—*State v. Corbett*, S. C. N. H., March 11, 1887; 9 Atl. Rep. 629.

51. CRIMINAL LAW — Homicide — Self-defense. —— When, in a prosecution for homicide, the facts raise any issue of self-defense, the jury, should be fully instructed on the law of self-defense. — *Lancaster v. Com.*, Ky. Ct. App., May 19, 1887; 4 S. W. Rep. 320.

52. CRIMINAL LAW—Practice—Misconduct—New Trial. Where, when a jury is out consulting about their verdict, at the request of the prosecuting attorney one of the jurors is brought into court and then asked about another case to determine whether it could be then tried, such proceedings are no ground for a new trial in the first case.—*State v. Washburn*, S. C. Mo., May 16, 1887; 4 S. W. Rep. 274.

53. CRIMINAL LAW—Trial—Defendant's Presence.—— When a defendant on bail in a criminal case absents himself before the conclusion of his trial, the court is not bound to stop the trial, and he will not be entitled to be discharged or to have a new trial.—*State v. Kelly*, S. C. N. Car., May 2, 1887; 2 S. E. Rep. 185.

54. CUSTOMS DUTIES — Appraisement —Hearing.—— The refusal of the appraisers to adjourn the hearing must be presumed to have been in accordance with their proper discretion.—*U. S. v. Earnshan*, U. S. C. C. (Penn.), April 19, 1887; 30 Fed. Rep. 672.

55. DEED—Delivery — Recording. ——A deed with no consideration, never out of the grantor's possession except while being recorded, and only made as stated to put the property out of the reach of creditors, cannot be considered to have been delivered.—*Weber v. Christen*, S. C. Ill., March 1, 1887; 11 N. E. Rep. 893.

56. DECENT — Marital Fourth—When Due.——A contest for a marital portion out of the succession of the surviving husband or wife is not premature, if the judicial demand therefor is made after the presentation of a final account of admininistration by the executor, and the right thereto is transmissible by inheritance, if the surviving spouse, who demanded it, dies before judgment.—*Succession of Piffet*, S. C. La., April 25, 1887; 2 South. Rep. 210.

57. DISTRICT ATTORNEY — Change of District. ——A district attorney does not become such of a new district merely because the county of his residence is transferred to the new district, though by law a district attorney must reside in the district for which he is elected.—*People v. Annis*, S. C. Colo., May 18, 1887; 14 Pac. Rep. 52.

58. DIVORCE — Judgment—Interlocutory Orders.—— Where an order allowing monthly alimony *pendente lite* is granted, and subsequently a divorce is granted, reserving the question of allowance to the wife, such decree is interlocutory as to the money part, and the original order allowing monthly alimony continues in force.—*In re Ambrose*, S. C. Cal., May 31, 1887; 14 Pac. Rep. 33.

59. DOWER — Ejectment—Adverse Possession.——In an action of ejectment by a widow for lands assigned to her as dower, which she has sold but has executed no conveyance, the defendants must prove continuous adverse possession in themselves to bar a recovery.— *Hancock v. Kelly*, S. C. Ala., Feb. 21, 1887; 2, South. Rep 281.

60. DOWER—Purchase Money—Recoupment.——Where a wife signs a bond for title without a privy examination, and subsequently receives the purchase money, if she claims dower thereafter in the premises, the purchaser can recoup the damages he sustains thereby.— *Hodge v. Powell*, S. C. N. Car., May 2, 1887; 2 S. E. Rep. 182.

61. EASEMENTS—Creation — Requisites.——An easement can only be created by deed, or user implying a deed.—*Cagle v. Parker*, S. C. N. Car., April 18, 1887; 2 S. E. Rep. 76.

62. ELECTIONS — Form of Ballots. ——An election ticket, headed "Democratic State Congressional and Senatorial, and independent Judicial and County ticket," which contains the name of an independent candidate for judge, does not violate the election law.— *Shields v. McGregor*, S. C. Mo., May 16, 1887; 4 S. W. Rep. 266.

63. ELECTIONS—Judges—Contests.——A circuit judge can hear the case of the contested election of a judge of the adjoining circuit in Missouri, and the petition therefor must be presented at the first term held after the election.—*Higbee v. Ellison*, S. C. Mo., May 16, 1887; 4 S. W. Rep. 258.

64. EMINENT DOMAIN—Wabash and Erie Canal—Stare Decisis.——When land is condemned and used for the Wabash and Erie Canal, the fee, as before decided, passes to the canal company.—*Frank v. Evansville, etc. R. Co.*, S. C. Ind., May 24, 1887; 12 N. E. Rep. 105.

65. EQUITY—Cross-bill.——A cross-bill in equity must be founded on matter growing out of the original suit, and the affirmative relief asked must be equitable.— *Griffin v. Fries*, S. C. Fla., March 23, 1887; 2 South. Rep. 266.

66. EQUITY — Fraud — Jurisdiction.——A mortgagee who has purchased the property at his foreclosure sale can file a bill against his mortgagor and the mortgagor's vendor, who is in possession, to perfect his title, when the two have colluded to defraud the mortgagee by withholding from record a deed to the land to which he is entitled.—*McHan v. Ordway*, S. C. Ala., Feb. 24, 1887; 2 South. Rep. 276.

67. EQUITY—Fund in Court—Lien.——Where horses are sold under a lien for their keeping, and the balance realized is paid into court, the lienor cannot, by bill in equity, regarding the clerk of the court as a trustee, subject the money to his claim for keeping the horses from the date of the petition to the time of the sale.—*Lord v. Collins*, S. J. C. Me., March 3, 1887; 9 Atl. Rep. 611.

68. EQUITY—Injunction—Title.——When, in an action for an injunction to restrain a trespass, the title to the property is involved, at most a temporary injunction may be granted till the title is determined by a suit at law.—*Clayton v. Shoemaker*, Md. Ct. App., April 22, 1887; 9 Atl. Rep. 635.

69. EQUITY—Parties — Multifariousness.——It is not necessary that all the parties to an equity suit shall have an interest in all the matters contained therein, it is sufficient if each party has an interest in some matter in the suit, and such matters are connected with the others.—*Lenz v. Prescott*, S. J. C. Mass., May 12, 1887; 11 N. E. Rep. 923.

70. EQUITY — Pleading — Answer. ——An answer in equity is evidence only so far as it is responsive to the bill.—*Christy v. Busch*, S. C. Fla., March 23, 1887; 2 South. Rep. 258.

71. EQUITY—Setting Aside Decree—Minors.——A decree for the conveyance, in order to pass the title, must, under the law, declare that it shall be regarded as a deed of conveyance. When such a decree directs minors on attaining their majority to make a deed, their remedy on coming of age, in order to have the decree set aside, is to move in the original suit, they not having made the deed.—*Morris v. White*, S. C. N. Car., May 16, 1887; 2 S. E. Rep. 254.

72. EQUITY—Specific Performance — Opening Decree. ——Before defendants will be allowed to open an interlocutory judgment for specific performance of a contract for the purchase of land in order to claim interest on the purchase money, they must consent to allow plaintiff prove as a set-off the damage to the land by the defendant's mismanagement thereof.—*Bostwick v. Reach*, N. Y. Ct. App., April 26, 1887; 12 N. E. Rep. 32.

73. EQUITY—Specific Performance—Stock. ——Equity will not enforce a specific performance for the sale of stock in a private corporation, unless it is shown that the plaintiff preferred that stock to any other of equal value, or to its money value.—*Eckstein v. Downing*, S. C. N. H., March 11, 1887; 9 Atl. Rep. 626.

74. EQUITY—Stockholders—Action Against Directors. ——An action by a stockholder against the directors of an insolvent bank, asking that they make good the losses incurred by their misconduct, is triable by the court, assisted by a jury on the questions of fact submitted to them.—*Brinckerhoff v. Bostwick*, N. Y. Ct. App., May 13, 1887; 12 N. E. Rep. 58.

75. EQUITY—Street Assessments—Injunction—Parties. ——In an action of injunction to restrain the sale of a lot for street impropements, for the expense of which improvements the city is in no case liable, the city is not a necessary party.—*Cohn v. Parcels*, S. C. Cal., May 28, 1887; 14 Pac. Rep. 26.

76. EQUITY — Supplemental Bill — Partnership. —— When a bill in equity for an accounting alleges there was a partnership, which never incorporated but issued shares of stock, which represented the interests of the partnership, a supplemental bill, alleging an incorporation of the partnership is not allowable, being antagonistic to the original bill.—*Maynard v. Green*, U. S. C. C. (N. Y.), April 13, 1887; 30 Fed. Rep. 643.

77. EVIDENCE—Bond—Extrinsic.——In an action on a bond in a sum certain for support and maintenance in consideration of property conveyed, it cannot be shown that it was orally agreed that the obligor was only to be held to the value of the property conveyed.—*Clever v. Hilberry*, S. C. Penn., May 23, 1887; 9 Atl. Rep. 647.

78. EVIDENCE — Declarations — Possession. ——Evidence of a party's declarations, made while he owned and was on land, is disparagement if his title cannot be contradicted by other declarations of his in favor of his title when he was not on the land.—*Royal v. Chandler*, S. J. C. Me., March 8, 1887; 9 Atl. Rep. 615.

79. EVIDENCE—Declarations — Res Gestæ. ——Statements made by defendant's baggage master as to how the fire occurred which destroyed plaintiff's baggage, are admissible as part of the *res gestæ* in a suit for the loss.—*Ill. Cent. R. R. v. Troustine*, S. C. Miss., May 24, 1887; 2 South. Rep. 255.

80. EVIDENCE—Incorporation—Killing Stock — Appeal. ——In an action against a railroad, under Kansas laws, for killing stock, on appeal by the railroad from the justice, before whom the defendant did not appear, it is not necessary for plaintiff to prove the incorporation.—*Kansas City, etc. R. Co. v. Bolson*, S. C. Kan., May 6, 1887; 14 Pac. Rep. 5.

81. EVIDENCE—Trespass — Quare Clausum.——In an action of trespass *quare clausum*, the defendant, without pleading the statute of limitations, may offer evidence of his adverse possession, the statutory period.—*Heilbron v. Heinlen*, S. C. Cal., May 28, 1887; 14 Pac. Rep. 22.

82. EVIDENCE—Value—Purchase Price.——In an action to recover possession of a horse, a party can testify what he paid for the horse as evidence of his opinion of its value.—*Boggan v. Horne*, S. C. N. Car., May 2, 1887; 2 S. E. Rep. 224.

83. EVIDENCE—Writing—Parol Agreement,——Where the consideration for a deed was that the grantee should pay certain debts of the grantor, of which a written schedule was made, it cannot be shown by the grantee's testimony alone that another debt was to be paid, which the grantee refused to have inserted in the schedule.—*Day v. Osborn*, S. C. Penn., May 9, 1887; 9 Atl. Rep. 643.

84. EXECUTION—Exemption — Claim of Suit—A party must file a schedule of all his property in the court from which execution issues against hm, specifying what is claimed as exempt, and ask for a *supersedeas*, before he can sue an officer for levying on exempt property.—*Settles v. Bond*, S. C. Ark., April 29, 1887; 4 S. W. Rep. 286.

85. EXECUTORS—Accounting.——When the executor of a father's estate has not accounted, an action against the son's executor does not lie, but the action should be against the father's executor; and the son's executor is only liable for damages resulting from his not bringing suit promptly against the father's executors to the detriment of the son's estate.—*Duchess D' Auxy v. Porter*, N. Y. Ct. App., May 3, 1887; 12 N. E. Rep. 34.

86. EXECUTORS —Accounts—Realty.——Executors are not chargeable for rents collected, nor entitled to credits for their management of the testator's realty in settling their accounts, when they were not entitled to its possession. If all the parties agree and there is no dispute, it might be well so to settle such accounts, otherwise they must seek the proper forum.—*Walker's Appeal*, S. C. Penn., May 23, 1887; 9 Atl. Rep. 654.

87. EXECUTORS—Claims—Appeal—Contempt.——When an attorney's claim for services rendered to the estate of the deceased is allowed, not as costs, but as a claim, it is appealable, and after the administrator has appealed relative thereto and filed a *supersedeas* bond, the superior court has no jurisdiction to punish the administrator as being in contempt in refusing to pay that claim.—*Stuttmeister v. Superior Court*, S. C. Cal., June 9, 1887; 14 Pac. Rep. 35.

88. EXECUTORS — Final settlement — Estoppel.——A final settlement of an executor cannot be attacked collaterally, and the heirs are estopped by such decree

from suing the executor on a note, which he owed the deceased, which was not inventoried, but fraudulently destroyed by the executor, they knowing the facts at the time of the destruction of the note.—*Tobelman v. Hildebrandt*, S. C. Cal., May 20, 1887; 14 Pac. Rep. 20.

89. EXECUTORS—Insolvency—Accounting—Bond.——The failure of an administrator to account within six months after a report is made by the commissioners of insolvency, when the estate is insolvent, but the property mentioned is more than sufficient to pay the expenses of administration and the privileged claims, is a breach of his bond.—*Judge of Probate v. Gross*, S. J. C. Me., March 3, 1887; 9 Atl. Rep. 612.

90. EXECUTORS — Lease — Liability.—— An executor, who enters upon property held by the deceased under a lease, holds as assignee thereof by operation of law, and the lessor can hold the estate or the executor personally liable for the rent accruing while he is in possession, unless by express contract or by his actions he is estopped from holding the executor personally liable.—*Becker v. Walworth*, S. C. Ohio, May 10, 1887; 12 N. E. Rep. 1.

91. EXECUTORS —Mortgage — Interest.——The mortgagee's interest in mortgaged lands passes to his administrator.—*Hemenway v. Lynde*, S. J. C. Me., March 10, 1887; 9 Atl. Rep. 620.

92. FRAUDS—Chattel Mortgage—Possession.——When it is claimed a chattel mortgage is fraudulent as to creditors, and that the mortgagors make sales out of the property for their own benefit while the mortgagees have possession of the goods, and have an agent to look after their interest, and the mortgage was given for a valid indebtedness, the question of fraud is for the jury.—*Manfg. & T. B. v. Koch*, N. Y. Ct. App., April 19, 1887; 12 N. E. Rep. 9.

93. FRAUD — False Representations — Evidence.—— When, in an action for falsely representing a certain patented article to be of great value in preventing pain in dentistry operations, the plaintiff offers proof that it is worthless, the defendant may show by a witness, that he suffered little pain when it was used, and great pain when it was not used.—*Reeve v. Dennett*, S. J. C. Mass., May 10, 1887; 11 N. E. Rep. 938.

94. FRAUDULENT CONVEYANCES—Debts — Preferences. ——A sale by an insolvent firm of his effects to a creditor, in payment of the debt due him and his assumption of other debts, is not fraudulent as to unpreferred creditors.—*Dixon v. Higgins*, S. C. Ala., May 3, 1887; 2 South. Rep. 289.

95. FRAUDS—Statute of—Memorandum—Laches.—— In North Carolina, only the party to be charged need sign the contract for a sale of lands; so if it is only signed by the vendor, the vendee is not bound thereby, but in such case the vendee must be prompt in demanding its performance or equity will not assist him.—*Love v. Welch*, S. C. N. Car., May 2, 1887; 2 S. E. Rep. 242.

96. GUARDIAN — Employment of Attorney.——The mother, as guardian on the death of the father, has power to contract with an attorney for compensation for a recovery of her ward's real property.—*In re Haynes*, N. Y. Ct. App., May 13, 1887; 12 N. E. Rep. 60.

97. GUARDIAN AND WARD — Sale—Vendee.——When the sale of a ward's land is ordered, and the guardian purchases it himself, his vendee can hold it, though no land was required from the guardian when he received the deed.—*Clements v. Ramsey*, Ky. Ct. App., May 12, 1887; 4 S. W. Rep. 311.

98. HOMESTEADS—Exchange—Exemptions.——Under Missouri law, the date of recording the deed is to be considered the time when the homestead is acquired, and a homestead acquired by exchange for the old one is not subject to claims arising between the execution of the deed therefor and its record.—*Smith v. Enos*, S. C. Mo., May 16, 1887; 4 S. W. Rep. 269.

99. HOMESTEAD—Intention.——When premises have never been used as a homestead, an intention to use them as such at an indefinite future time will not make them such.—*Keyes v. Bump*, S. C. Vt., June 6, 1887; 9 Atl. Rep. 598.

100. HOUSEHOLDER—Action—Venue.——A single man occupying a room as a sleeping apartment, and taking his meals elsewhere, is not a householder, under the Alabama laws, relative to the venue for suits.—*Ketzenberg v. Lehman*, S. C. Ala., May 6, 1887; 2 South. Rep. 272.

101. HUSBAND AND WIFE — Community—Accounting. ——There can be no accounting between husband and wife during the existence of the community, as to quantity of labor bestowed on the capital withdrawn by either.—*Bartoli v. Huguenard*, S. C. La., April 11, 1887; 2 South. Rep. 196.

102. HUSBAND AND WIFE—Paraphernal Property—Compromise.——A married woman, authorized by her husband, may compromise a law suit against her, or make a transaction relative to her paraphernal property to prevent a law suit relative thereto, and such action has, between the interested parties, a force equal to the authority of things adjudged.—*Calhoun v. Lane*, S. C. La., March 7, 1887; 2 South. Rep. 219.

103. HUSBAND AND WIFE—Trust —Parol Agreement. ——A wife consented to a transfer of her real estate, upon a parol agreement with her husband, that the proceeds thereof should be secured to her. The husband paid off a lien on the estate, but died before he had secured the fund to his wife. *Held*, that his estate was chargeable with the value of the estate sold, less the amount of the lien discharged.—*Cade v. Davis*, S. C. N. Car., May 2, 1887; 2 S. E. Rep. 225.

104. HUSBAND AND WIFE—Wife's Property—Recording.——The joint deed of husband and wife conveying her property is good as between the parties, though not recorded.—*Christy v. Burch*, S. C. Fla., March 23, 1887; 2 South. Rep. 258.

105. INFANTS — Contracts — Avoidance.——An infant may avoid his written contract for compensation and sue on a *quantum meruit*, though he fraudulently represented himself to be of age to the shipping commissioner for the vessel.—*Burdett v. Williams*, U. S. D. C. (Conn.), May 4, 1887; 30 Fed. Rep. 697.

106. INJUNCTION—Execution Sale—Erroneous Proceedings. —— Where property is sold under execution, which was erroneous in some particulars, which is redeemed by another creditor who sells under his execution, and is redeemed by another creditor who is about to sell, an injunction against his sale by another creditor, while an appeal is pending on the original judgment, on the ground of the illegality of the original proceedings, will not be granted.—*Union Iron Works v. Bassick M. Co.*, S. C. Colo., May 18, 1887; 14 Pac. Rep. 54.

107. INSURANCE—Cancellation—Broker.——A cancellation of a policy of insurance, which provides in that case for a return *pro rata* of the premium, is valid, when no part of the premium has been paid, but credit therefor has been given to the broker.—*Stone v. Franklin I. Co.*, N. Y. Ct. App., May 10, 1887; 12 N. E. Rep. 45.

108. INSURANCE —Fire — Application — Misrepresentation.——An application for an insurance policy forms a part of the contract, and one who can read and has warranted his answers, cannot assert that he was ignorant of its contents in the absence of fraud or mistake. A misrepresentation therein as to the insured's title in a certain portion of the property insured avoids the policy entirely.—*Cuthbertson v. N. C. Home, etc. Co.*, S. C. N. Car., May 16, 1887; 2 S. E. Rep. 258.

109. INSURANCE — Life — Insurable Interest — Assignment.——Where A assigned an insurance policy on his life to B in payment of a debt, and B assigned it to C, and C to D, in payment of debts respectively owing. *Held*, that the company not contesting the interest, that D was to be preferred to B in the disposition of the fund, the question of insurable interest being immaterial in this suit.—*Conn. M. L. etc. Co. v. Fisher*, U. S. C. C. (Mo.), May 7, 1887; 30 Fed. Rep. 662.

110. INSURANCE—Mutual Benefit—By-laws—Will.—— Where A is insured in a mutual benefit association for B's benefit, and a change in his policy can only, by its by-laws, be effected by a surrender of the policy, a different disposition of the money by his will is invalid.

—*Holland v. Taylor*, S. C. Ind., May 24, 1887; 12 N. E. Rep. 116.

111. IMPRISONMENT—Concealing Property—Discharge.——The law, that a person shall not be imprisoned for over six months, does not apply where one is imprisoned for concealing part of the chattels in an action for the recovery of personal property.—*Levy v. Soloman*, N. Y. Ct. App., May 10, 1887; 12 N. E. Rep. 53.

112. INTEREST—Judgment—Conflict of Laws.——An action on a judgment obtained in Utah, must be governed as to interest on the laws of the State where the suit is brought.—*Wells, etc. & Co. v. Davis*, N. Y. Ct. App., May 10, 1887; 12 N. E. Rep. 42.

113. INTOXICATING LIQUORS — Search and Seizure — Allegations.——In a complaint for search and seizure of intoxicating liquors, in the allegation of previous convictions, it is not necessary to allege that the respondent intended to sell the liquors himself.—*State v. Hawley*, S. J. C. Me., March 8, 1887; 9 Atl, Rep. 620.

114. JUDGMENT — Confession—Amendment.——A motion by plaintiff to amend the statement of a confession of judgment is addressed to the discretion of the supreme court, and the court of appeals will not impose different terms on the plaintiff.—*Symson v. Selheimer*, N. Y. Ct. App., April 26, 1887; 12 N. E. Rep. 31.

115. JUDGMENT — Liens — Decedent. —— Creditors in New York have a lien on the estate of a deceased debtor for three years, but if it is aliened after that time, it is no longer subject to any judgment obtained against the representative of the deceased.—*Platt v. Platt*, N. Y. Ct. App., April 26, 1887; 12 N. E. Rep. 22.

116. JUDGMENT — Parties — Record. —— When it is doubtful who was the defendant in a judgment record, the description applying to several, reference may be had to the process, pleadings and proceedings to determine.—*Moultrop v. School-District*, S. C. Vt., June 8, 1887; 9 Atl. Rep. 608.

117. JUDGMENT—Res Adjudicata.—— A plea in an action by a church for breach of contract, that the defendant has obtained judgment against the guarantor of the church for the contract price, and that the rector, wardens and vestrymen of the church, or some of them, participated in the action, is demurrable, as a plea of *res adjudicata*.—*St. John's Epis. Church v. Berg*, S. C. Miss., May 23, 1887; 2 South. Rep. 254.

118. JUDGMENT—Res Adjudicata.——A plea of *res adjudicata* against a party is bad when it appears that in the other suit he sued in a representative capacity, unless it in some way shows that his rights individually were adjudicated in that suit.—*McBurnie v. Seaton*, S. C. Ind., May 19, 1887; 12 N. E. Rep 101.

119. JURORS—Voir Dire—Interest.—— The examination of a juror on the *voir dire* is to determine his interest in the cause and to decide whether to challenge him peremptorily, and when he denies that his life is insured in the defendant company for the benefit of his wife, when the truth is the reverse, the plaintiff is entitled to a new trial.—*Pearcy v. Michigan, etc. Co.*, S. C. Ind., May 18, 1887; 12 N. E. Rep. 98.

120. JUSTICES—Trial—Irregularities.——When a jury returns a verdict before a justice which does not express their meaning, and the justice continues the case and allows the jury to separate, and they render a verdict the next day, such verdict must be set aside and a new trial granted.—*Nickelson v. Smith*, S. C. Oreg., May 24, 1887; 14 Pac. Rep. 40.

121. JUSTICES—Void Judgment.——A judgment of a justice of the peace rendered before the hour of citation, in the absence of the defendant and his counsel, is void.—*Yentzer v. Thayer*, S. C. Colo., May 18, 1887; 14 Pac. Rep. 53.

122. LACHES—Money Loaned—Enforcement.——Where a son loaned money to his father in 1864, taking no security and no note, which money the father used to pay off a mortgage on his property, and the father died in 1864 and his estate was closed in 1869, the son cannot assert a lien against the land in a partition suit brought in 1883, he not having enforced his claim in any way prior thereto.—*Baird v. Chapman*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 73.

123. LANDLORD AND TENANT—Lien—Assignment.—— An assignee for the benefit of creditors retains the property for the benefit of all creditors, and the landlord need not sue out a distress warrant to preserve it, nor does he lose it by the removal of the goods by the assignee. If the assignee retains possession he must pay rent out of the assigned estate.—*Loth v. Carty*, Ky. Ct. App., May 12, 1887; 4 S. W. Rep. 314.

124. LANDLORD AND TENANT—Lien—Priority.——When a tenant mortgages his personalty on the leased premises, and subsequent thereto holds over under a later agreement for a renewal of his lease, the mortgage takes priority over a claim for rent under the new term.—*Upper Appomattox Co. v. Hamilton*, S. C. App. Va., May 12, 1887; 2 S. E. Rep. 195.

125. LANDLORD AND TENANT—Lien—Sale of Crops.—— One who buys cotton from a lessee, with notice of the tenancy, is liable in an action on the case to the landlord on account of his lien thereon for rent, under Mississippi law, unless the landlord consented to such sale.—*Cohn v. Smith*, S. C. Miss., May 23, 1887; 2 South. Rep. 244.

126. LANDLORD AND TENANT—Recovery of Possession—Justice.——Where one, in possession of land under color of title, agrees to secure the landlord in the rent for the remainder of the year, but does not, the landlord cannot sue for possession before a justice, under the law of South Carolina.—*Goodgion v. Latimer*, S. C. S. Car. March 1, 1887; 2 S. E. Rep. 1.

127. LEASE—Use of Premises.——Though a lease may be silent as to the use to be made of the premises, yet, under the code, the thing leased must be enjoyed according to the use for which it was intended by the lease, which may b shown by parol from all the surrounding circumstances.—*New Orleans, etc., R. Co. v. Darius*, S. C. La., May 9, 1887; 2 South. Rep. 280.

128. LIEN—Factor—Advances.——Where A ships goods to B, telling him to place the proceeds thereof to C's credit, as he had done before, the goods really belonging to C, B cannot hold the proceeds for an indebtedness of A to him.—*Darlington v. Chamberlain*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 78.

129. LIFE ESTATE — Growing Crops — Administrator. ——The administrator of a widow, who had under her husband's will or life estate in his property charged with the maintenance of their children, may take possession of the growing crops and other personal property to discharge debts created by her in carrying out the will.—*Shannon v. Davis*, S. J. C. Mass., May 9, 1887; 2 South. Rep. 240.

130. LIMITATION OF ACTION—Contract. ——Parties can limit in their contracts the time in which suits can be brought thereon.—*Vetle v. Clinton Fire Ins. Co.*, U. S. C. C. (Mo.), April 30, 1887; 30 Fed. Rep. 668.

131. LIMITATIONS—Adverse Possession—Offer of Settlement.——When a party is in possession of land claiming it as his own from 1850 to 1876 he acquires title by adverse possession, which is not invalidated by the fact that on a survey then made he finds the land belonged to another, whose claim he then offered to buy rather than have any trouble.—*Furlong v. Cooney*, S. C. Cal., May 21, 1887; 14 Pac. Rep. 12.

132. LIMITATIONS—Administrators, Suits Against.—— When an administrator dies indebted to the estate, the right to sue to charge his real estate therefor when his administrator qualifies, and the suit is barred after seven years thereafter.—*Syme v. Badger*, S. C. N. Car., April 18, 1887; 2 S. E. Rep. 61.

133. LIMITATIONS—Executors—Sureties Actions.——A was appointed B's administrator in 1869 and C was on his bond. C died in 1873 and his administrator was discharged in 1875. In 1883 A died. In 1885 a new administrator of B's estate brought suit to charge C's estate with an alleged *devastavit* of B's estate by A. *Held*, that the suit was barred.—*Andrews v. Powell*, S. C. N. Car., May 2, 1887; 2 S. E. Rep. 235.

134. LIMITATIONS — Foreclosure of Mortgage —Pleadings.——A second mortgagee, who was never in possession of the premises nor ever had the legal title, cannot have a foreclosure and sale under the earlier mortgage, to which suit he was not a party, set aside because the foreclosure was barred, if the mortgagor did not plead the statute in the foreclosure suit.—*Sanger v. Nightingale*, U. S. S. C., May 23, 1887; 7 S. C. Rep. 1109.

135. LIMITATIONS — Fraudulent Conveyances—Accusal of Action — Pleadings. —— A suit by a creditor to set aside a conveyance by his debtor as fraudulent must be brought within five years after its discovery and ten years after its execution, but where the action is brought more than five years after the deed was filed for record, the plaintiff must allege that it is brought within five years after its discovery, and that with due diligence he could only discover the fraud within five years of the bringing of the suit.—*Cotton v. Brown*, Ky. Ct. App., May 3, 1887; 4 S. W. Rep. 294.

136. LIMITATION — Infant — Administrator. —— When an infant dies leaving a cause of action, which accrues to his personal representative, the statute of limitations begins to run on the qualification of his administrator.—*Sorrells v. Trantham*, S. C. Ark., April 23, 1887; 4 S. W. Rep. 281.

137. LIMITATION —Payment—Application—Partnership —Private Account.——A debtor paid various sums of money to a person, to whom he was indebted individually and as survivor of a partnership. The creditor applied the payments to his individual account, and at his death that amount was largely overpaid. *Held*, that the surplus would be applied as paid by law to the partnership account, although the account was so relieved from the bar of the statute of limitations.—*Robie v. Briggs*, S. C. Vt., June 1, 1887; 9 Atl. Rep. 593.

138. LIMITATION—Part Payment by Third Party.—— When a party loans money to another on the promise of a third party unknown to the borrower, that he would pay in case of default by the third party, does not prevent the running of the statute of limitations as to the borrower.—*Blair v. Lynch*, N. Y. Ct. App., April 19, 1887; 11 N. E. Rep. 947.

139. LIQUORS — Camp-meeting — Police Power.——A law that no one can sell liquor or goods within a mile of a camp-meeting without the consent of those in charge thereof, except that those having regular places of business within that distance can continue their business, is constitutional, under the police power. —*Meyer v. Baker*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 79.

140. MANDAMUS—Counties—Warrants—Bonds.——The holder of a county warrant is entitled to a *mandamus* against the county commissioners to compel them to issue to him a county bond therefor, when the county has voted in substantial compliance with the law to issue bonds to fund its indebtedness.—*Co. Commrs. of Summit Co. v. People*, S. C. Colo., April 30, 1887; 14 Pac. Rep. 47.

141. MANDAMUS—Rehearing — Judgment.——A *mandamus* will not lie to compel the rehearing of a cause, when it has been heard and finally adjudged, because the reasons on which the judgment is based are insufficient and illegal.—*State v. Monroe*, S. C. La., May 9, 1887; 2 South. Rep. 215.

142. MASTER AND SERVANT—Independent Contractor—Custom.——Where a party contracts with a company to mine coal at a fixed rate and employs his laborers, there is no relation between the laborers and the company, unless there is a custom to that effect, and then they are only liable if the laborer's time has been turned in and he has not been paid in full.—*Plymouth Coal Co. v. Kommisky*, S. C. Pa., May 16, 1887; 9 Atl. Rep. 646.

143. MASTER AND SERVANT—Negligence—Infant—Fellow-servant.——When a boy, 17 years old, an apprentice, is ordered by the foreman to assist another employee, who is doing work requiring the services of a skilled mechanic, which he is not, and while obeying his orders the boy is killed owing to the employee's lack of skill, the master is liable, the two not being fellow-servants.—*Missouri P. R. R. v. Peregoy*, S. C. Kas., May 6, 1887; 14 Pac. Rep. 7.

144. MASTER AND SERVANT — Negligence —Jury.—— Where a servant is killed in a mine by a car running off the track and knocking down the timbers, so that the earth fell on him, it is a question for the jury whether the master was guilty of negligence in the original construction, or in properly maintaining it, and whether the deceased should have discovered the defect.—*Silliman v. Marsden*, S. C. Pa., May 16, 1887; 9 Atl. Rep. 639.

145. MORTGAGES—Recording — Lien.——A mortgage, though recorded after the time prescribed, is a lien from the date of its record, and takes precedence over all claims not then established as liens.—*S. C. Loan & T. Co. v. McPherson*, S. C. S. Car., April 19, 1887; 2 S. E. Rep. 267.

146. MUNICIPAL CORPORATION — Exceeding Powers—Liability.——A municipal corporation which, in excess of its powers, allows a flume to be built in its streets, is not liable for the injury caused thereby.—*Town of Idaho Springs v. Filteau*, S. C. Colo., May 18, 1887; 14 Pac. Rep. 48.

147. MUNICIPAL CORPORATIONS — Ordinance—Penalty. ——A town ordinance, that any one who fails to make such repairs, when it is his duty to do so, shall be fined a sum not exceeding $500, and one dollar a day for each day he may neglect to do so, is void for uncertainty.—*State v. Rice*, S. C. N. Car., May 2, 1887; 2 S. E. Rep. 180.

148. MUNICIPAL CORPORATIONS—Streets—Digging.—— The owner of the fee of a street in an incorporated town cannot remove gravel from the bed of the street without the consent of the town authorities, when they are required to keep the street in order.—*Town of Palatine v. Krueger*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 75.

149. NAVIGATION — Bottomry — Mortgage.——A note given by a master in a foreign port by the owner's authority for necessary supplies, pledging the vessel for the payment ten days after the completion of the voyage, is a valid bottomry lien, and has precedence over a prior mortgage.—*Bolten v. The James L. Pendergast*, U. S. D. C. (N. Y.), March 31, 1887; 30 Fed. Rep. 717.

150. NAVIGATION—Rules of—Pilot Boats—Collision.—— A vessel at sea on pilotage grounds is subject to the usual rules of navigation relative to a pilot boat, whose signal offering services she has not answered, and whose services she does not desire.—*The Cambusdoon*, U. S. D. C. (N. Y.), April 14, 1887; 30 Fed. Rep. 704.

151. NAVIGATION—Slips — Obstructions — Contributory Negligence. ——Vessels so moored as to partly obstruct the entrances to narrow passages, which are thoroughfares, will be considered guilty of contributory negligence in case of collisions.—*The Margaret J. Sanford*, U. S. D. C. (N. Y.), May 1, 1887; 30 Fed. Rep. 714.

152. NAVIGATION—Sailing Vessels—Collision.——While it is doubtful what one sailing vessel proposes to do, another has a right to keep her course.—*The B. C. Terry*, U. S. D. C. (N. Y.), April 26, 1887; 30 Fed. Rep. 711.

153. NEGLIGENCE —Contributory — Instruction.——In a case where the defendant is liable for ordinary negligence, an instruction that, if the plaintiff was not guilty of contributory negligence, or, if negligent, that his negligence was slight, and did not directly contribute to the injury to find for the plaintiff, is not erroneous.—*Union Pac. R. R. v. Henry*, S. C. Kan., May 6, 1887; 14 Pac. Rep. 1.

154. NEGLIGENCE—Contributory — Railroad Crossing. ——A party who drives a wagon full of empty bottles across a railroad crossing, where he can only see a few feet up the track till he gets on it, is guilty of contributory negligence, if he does not stop and listen before he goes on the track, the rattling of the bottles preventing him from hearing the approach of a train.—*Merbie v. New York, etc. R. R.*, N. J. Ct. Err. & App., March Term, 1887; 9 Atl. Rep. 680.

155. NEGLIGENCE—Trespassers — Brakesmen.——If a brakesman orders a boy 15 years of age, who is riding on a freight train as a trespasser, to jump off when the

train is in dangerous motion and in the night time, and in so doing the boy is injured, the railroad is liable.—*Kansas City, etc. R. R. v. Kelley*, S. C. Kan., June 11, 1887; 14 Pac. Rep. 172.

156. OFFICE — Compensation — Tax-collector. —— When a county tax-collector collects county licenses, which licenses were imposed after his term of office began, both the board of supervisors and himself supposing it to be his duty to collect them as tax-collector, he cannot collect on a *quantum meruit* from the county any compensation therefor.—*Rowe v. County of Kern*, S. C. Cal., May 25, 1887; 14 Pac. Rep. 11.

157. OFFICERS — County Commissioners — Discretion. — ——It is within the discretion of the county commissioners to refuse to prolong their session after the first day, in order the register of deeds elect may obtain a new bond instead of the one then rejected, and they may declare the office vacant and elect a new officer.—*Cole v. Patterson*, S. C. N. Car., May 16, 1887; 2 S. E. Rep. 262.

158. PARENT—Child—Support — Divorce.——A father is bound to support his minor children, but not a mother during his life. After a divorce for desertion and want of support, the wife may sue the husband for a support of their minor children, when no provision therefor or for their custody was made in the divorce proceedings.—*Gilley v. Gilley*, S. J. C. Me., March 10, 1887; 9 Atl. Rep. 623.

159. PARTITION—Abatement.——Where the heirs of a deceased person have brought suit for partition against the widow, the death pending the suit of two of the complainant's intestate, leaving as the only heirs at law their co-complainants, do not abate the suit as to the interests of the deceased complainant.—*Speck v. Pullman Car Co.*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 213.

160. PARTITION — Judgment — Alteration.——In proceedings by rule to enforce a judgment in partition, which has become final, or to compel the completion of the adjudication of the property, the judgment cannot be altered or amended.—*Gerish v. Pope*, S. C. La., May 9, 1887; 2 South. Rep. 227.

161. PARTNERSHIP—Act of Partner—Arbitration.—— A submission of partnership matters involved in a pending suit to arbitration by one partner does not bind the other partners, and the partnership can still prosecute the suit.—*Fanchon v. Bibb Furnace Co.*, S. C. Ala., May 3, 1887; 2 South. Rep. 268.

162. PARTNERSHIP — Dissolution — Limitation. —— When a partnership may be dissolved at pleasure, and a partner abandons the business and tells his partners to settle as they please and form a new partnership, the partnership is dissolved, and a suit for an accounting is barred in five years thereafter.—*Blake v. Swelting*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 67.

163. PARTNERSHIP — Injunction — Accounting — Relief. ——Where a partner, after a dissolution, enjoins his partner from disposing of the assets, which is altered allowing either partner to dispose of them at not less than cost price, on a bill for an accounting brought by the first partner, relief will be denied, when it appears that he disposed of a large part of the property at less than cost price.—*Kinney v. Robinson*, S. C. Mich., June 9, 1887; 33 N. W. Rep. 172.

164. PARTNERSHIP — Liquidating Partner — Liability. ——A running partner, who is bound by the articles to liquidate the concern in six months after the death of his partner, is liable for the value of all the assets at that time, when they cannot be returned *in integrum*.—*Klotz v. Macready*, S. C. La., April 11, 1887; 2 South. Rep. 203.

165. PARTNERSHIP — Secret Partner—Liability.——A person can recover for goods sold to a partnership against a secret partner, though at the time of sale he did not know him to be such.—*McDonald v. Clough*, S. C. Colo., May 18, 1887; 14 Pac. Rep. 121.

166. PATENTS FOR INVENTIONS—Driven Wells—Abandonment—Infringement—Expiration.——Re-issued letters patent No. 4372, to N. W. Green, cover the process of driving the well and its use afterwards. Where the patentee constructed such a well at his home, and one at the camp of his regiment, and ordered machinery for the purpose to take with his regiment, and then and down to 1866 he was harassed by civil and criminal suits, there is thereby shown no intention to abandon the invention. A suit for infringement of a patent is not defeated by an expiration of the patent before final decree.—*Beadle v. Bennett*, U. S. S. C., May 23, 1887; 7 S. C. Rep. 1090.

167. PATENTS FOR INVENTIONS—Driven Wells—Publications.——The driven well (patent 73,425, and re-issue to N. W. Green) is a valid patent, being new and useful. Unless a publication exhibits the latter invention so that those skilled in the business can comprehend it without assistance from the patent, or make it, or repeat the process, such publication will not invalidate the patent.—*The Driven Well Cases*, U. S. S. C., May 23, 1887; 7 S. C. Rep. 1073.

168. PLEADING—Amendment.——A declaration against a surviving partner as indorser of a note, may be amended by the addition of a count against him as an individual indorser.—*Lane v. Barron*, S. C. N. H., March 11, 1887; 9 Atl. Rep. 544.

169. PLEADINGS — Amendments — Ejectment. ——In an action of ejectment the plaintiff may amend the number of the range described in the complaint. It corrects a mistake.—*Heilbron v. Heinlen*, S. C. Cal.,, May 28, 1887; 14 Pac. Rep. 24.

170. PLEADING — Amendment — Limitation. ——The declaration may be amended, though a new suit for that cause of action would be barred.—*Gagnon v. Connor*, S. C. N. H., March 11, 1887; 9 Atl. Rep. 631.

171. PLEADING—Parties — Injunction.——A *cestui que trust* need not be made a party to a suit brought by a trustee to enjoin a city from taking private property belonging to the trust for a street.—*Smith v. City of Portland*, U. S. C. C. (Oreg.), April 7, 1887; 30 Fed. Rep. 734.

172. PLEADING—Partnership — Waiver.——When the individual names of the plaintiffs are set forth in the summons, but only the partnership name in the complaint, the defect is waived by going to trial without objection on a plea to the merits.—*Moore v. Watts*, S. C. Ala., Feb. 24, 1887; 2 South. Rep. 278.

173. PLEADINGS—Plea in Abatement — Garnishment. ——A plea in abatement, that the action is not maintainable because the only trustee of the defendant is not a resident of the county in which the action is brought, is bad, in that it does not allege that he was not such resident when the action was brought.—*Biddeford S. Bank v. Mosher*, S. J. C. Me., March 5, 1887; 9 Atl. Rep. 614.

174. PLEADING—Real Estate Agent—Commission.—— When the contract sued on provided that the plaintiff was to have a commission if he made a sale of the property, and a less commission if withdrawn or sold without the assistance of the plaintiff within nine months, but if sold to a party introduced by A, he was to have the higher commission regardless of time of sale, a suit for commissions for the sale to a party so introduced need not allege the sale was made within nine months.—*Williams v. Leslie*, S. C. Ind., May 20, 1887; 12 N. E. Rep. 102.

175. PLEADING—Statutory Proceeding — Proviso.—— When a party is sued for not maintaining a bridge over a public road, under the statute, on account of his ditch or dam, the pleading need not set out the proviso excepting certain parties.—*Wadsworth v. Stewart*, S. C. N. Car., May 2, 1887; 2 S. E. Rep. 190.

176. POWERS—Testamentary.——A testatrix, by her will made during her husband's life, empowered her executors to sell her real estate as her husband should direct. After his death, by a codicil, she empowered them, in unqualified terms, to sell and dispose of any of the estate. *Held*, a sale of part of the real estate by the executors was valid.—*Brewer v. Taylor*, S. C. Penn., May 9, 1887; 9 Atl. Rep. 515.

177. PRACTICE—Attachment—Stock — Corporation.—— In an action to compel the transfer of stock by a corporation to a purchaser under attachment and execution, it is no defense that the stock was duly assigned to a third party prior to the judgmeut, it not being alleged that the assignment was made prior to the attachment. Such case will not be remanded on motion on appeal to settle the newly arising conflicting claims of a third party to the stock —*Morehead v. West., etc. R. Co.*, S. C. N. Car., May 9, 1887; 2 S. E. Rep. 247.

178. PRACTICE—Bill of Exceptions—Stipulation—Striking From Record.——Where, by stipulation of parties and to suit the judge's convenience, the settling of the bill of exceptions is postponed, and is signed at the next term and during the session of the supreme court to which the writ of error is returnable, it will not be stricken from the record for not being allowed and signed in time.—*Davis v. Patrick*, U. S. S. C., May 23, 1887; 7 S. C. Rep. 1102.

179. PRACTICE—Continuance—Error. ——The refusal of a court to grant a continuance, is not assignable as error.—*Lingenfelter v. Williams*, S. C. Penn., May 23, 1887; 9 Atl. Rep. 653.

180. PRACTICE—Instructions—Evidence.——As a rule, the instructions should put a case to the jury on all the evidence with proper explanations, and not single out the evidence of one witness.—*Long v. Hall*, S. C. N. Car., April 11, 1887; 2 S. E. Rep. 229.

181. PRACTICE—Nonsuit—Appeal — Reversal.——When the court erroneously refuses to nonsuit the plaintiff for not proving up his case, and an exception thereto is taken and sealed, and the necessary proof is not supplied, the case will be reversed on appeal.—*Rochat v. N. H., etc. R. Co.*, N. J. Ct. Err. & App., March Term, 1887; 9 Atl. Rep. 688.

182. PRACTICE—Principal and Agent—Authority—Evidence.——A, fearing insolvency or attachments, being desirous of securing certain creditors, left his stock of goods in the hands of his brother, with the following authority: "This is to certify that my brother, John F. Evans, has my consent and authority to transact all my business while I am away, and I will be responsible for same." The brother executed a bill of sale of the stock to the creditors preferred in satisfaction of their claims. *Held*, that evidence of the circumstances under which the authority was given, was admissible to show that E intended to give his brother authority to so settle and compromise.—*Wood v. Clark*, S. C. Ill., June 17, 1887; 12 N. E. Rep. 271.

183. PRACTICE—Parties—Admission—Chattel Mortgage. ——Where a trustee, under a chattel mortgage, sues to recover possession of the property, a trustee, under a prior mortgage, who is also surety on the mortgagee's forthcoming bond for the property, is entitled to be admitted as a party to the action, under the law.—*Smith v. Moore*, S. C. Ark., April 23, 1887; 4 S. W. Rep. 282.

184. PRACTICE—Removal of Causes—Motion to Dismiss.——When the removal of a cause is refused by a State court on the ground of lack of proof of citizenship, and the cause is tried, this court will advance the cause on the docket on a motion to dismiss the writ of error.—*Burlington, etc. R. Co. v. Dunn*, U. S. S. C., April 4 1887; 7 S. C. Rep. 1114.

185. PRACTICE — Special Verdict—Extrinsic Aid.—— A special verdict cannot be aided by the evidence of any extrinsic matter.—*Com. v. Grimes*, S. C. Penn., May 23, 1887, 9 Atl. Rep. 665.

186. PRINCIPAL AND SURETY—Bankruptcy—Discharge. ——A surety is not released by a discharge of the principal through bankruptcy. An extension of time of payment to the principal will not release the surety, unless the payee knew of the suretyship.—*Post v. Losey*, S. C. Ind., May 23, 1887: 12 N E. Rep. 121.

187. PRINCIPAL AND SURETY—Extension—Fraud.—— Where the principal obtains an extension of time by giving a new note with the name of the surety thereon, the surety is not thereby discharged from his liability on the first note.—*Hubbard v. Hart*, S. C. Iowa, June 14, 1887; 33 N. W. Rep. 233.

188. RAILROADS—Duties of Passengers — Instructions. ——In an action against a railroad for assault by a brakeman, an instruction that if there were no seats for passengers and people were standing, yet the plaintiff, on order, was bound to go inside, is error.—*Graville v. Manhattan R. Co.*, N. Y. Ct. App., May 10, 1887; 12 N. E. Rep. 51.

189. RAILROADS—Killing Stock—Evidence.——A judgment for the plaintiff in an action for killing stock should be reversed when it appears that the night was very dark, that the engineer did not see the cattle till they were ten or fifteen feet from the locomotive, and he used every effort in vain to prevent the accident.—*New Orleans, etc. R. Co. v. Burkett*, S. C. Miss., May 23, 1887; 2 South. Rep. 253.

190. RAILROADS—Killing Stock—Negligence.—— Where a railroad bridge abuts on a highway, in a case for killing stock thereon, it is incumbent on the railroad to show that it used all reasonable and practicable precautions to keep animals from entering thereon from the highway.—*Cincinnati, etc. R. Co. v. Jones*, S. C. Ind., May 23, 1887; 12 N. E. Rep. 113.

191. RAILROADS —Land Damages — Mortgagee's Liability.——The L. Co. agreed to pay the owner of land through which it ran $678 and interest as damages. The L. Co. then went into the hands of the St. J. Co. by foreclosure. The owner of the land sold the land contiguous to, but reserved the land included in the survey of the road. On a bill to hold the St. J. Co. to pay the land damages, *held first*, no privity between the two companies so as to bind the St. J. Co.; *second*, the agreement, under the statute, was not as binding as a judgment would have been; *third*, the St. J. Co. was liable only by its own taking and from the time of taking possession, and was not liable for damages to the contiguous land, as the orator was not the owner at the time it took possession.—*Sessnott v. Railroad*, S. C. Vt., May 28, 1887; 9 Atl. Rep. 554.

192. RAILROADS—Rights Acquired by Eminent Domain. ——A railroad corporation, in possession of lands for railroad purposes, has no right to sell or dispose of grass growing by a roadside against the owner of the fee, who wishes to remove it.—*Bailey v. Sweeney*, S. C. N. H., March 11, 1887; 9 Atl. Rep. 543.

193. RAILROAD CROSSINGS.——Gen. Laws N. H., ch. 161, § 3, providing that a town may by vote require a railroad to secure a crossing by gates, is not repealed by § 7, ch. 101, Laws 1883.—*Concord, etc. R. Co. v. Portsmouth*, S. C. N. H., March 11, 1887; 9 Atl. Rep. 546.

194. RECEIVER—Rent—Removal.—— A chancery receiver does not be come liable for rent for entering into possession of the premises to sell the goods of the lessee under the orders of court, nor has the landlord a lien on the goods for rent accruing after the sale and removal of the goods by the purchaser.—*Gaither v. Stockbridge*, Md. Ct. App., April 22, 1887; 9 Atl. Rep. 632.

195. REFEREE—Compensation.——When a matter is submitted to a referee, who is to receive $20 a day, he cannot claim pay for days when no hearing was had, when in advance the parties agreed to an adjournment, and so notified the referee.—*Mead v. Tuckerman*, N. Y. Ct. App., May 13, 1887; 12 N. E. Rep. 64.

196. REFERENCE—Accounting.——Where an accounting and the decree rendered thereon was reversed and a new accounting rendered, it was held to be error to take account only of matters occurring after the first accounting, and that a new accounting should be taken of the earlier transactions.—*Shipman v. Fletcher*, S. C. App. Va., May 13, 1887; 2 S. E. Rep. 198.

197. RELEASE — Judgment Lien — Joint Debtors—— The lease of certain land belonging to either of joint debtors under a judgment from the lien thereon, in no way effects the right to collect the judgment from either of the debtors.—*Gegner v. Howell*, S. C. Iowa, June 15, 1887; 33 N. W. Rep. 240.

198. REPLEVIN —Value — Appraisement —— Where a

sheriff has goods, which he has attached, appraised, such value is *prima facie* the true value against the sheriff.—*Carson v. Golden*, S. C. Kan., June 11, 1887; 14 Pac. Rep. 166.

199. SALE—Prompt Shipment——Where by contract goods are to be shipped promptly from Europe, and delivered in New York, loading the goods on a steamer frozen in a river, whereby the delivery was delayed one month longer than was necessary, is not a compliance with the contract.—*Tobias v. Lissberger*, N. Y. Ct. App., April 19, 1887; 12 N. E. Rep. 13.

200. SALE—Fraud—Stock——A purchaser of corporate stock, induced thereto by false representations of the seller, may rescind the contract and recover back his money.—*Bridge v. Penniman*, N. Y. Ct. App., April 19, 1887; 12 N. E, Rep. 19.

201. SALE—Mutual Mistake—Action on Note.——When by mistake the wrong machine was sent to the purchaser, which mistake was not discovered till a note was given for the unpaid balance, no arrangement was effected between the parties, and the purchaser used and sold the machine: *Held*, that the purchaser in a suit on the note was not estopped to claim a recoupment for the defects of the machine.—*Egan Co. v. Johnson*, S. C. Ala., May 24, 1887; 2 South. Rep. 302.

202. SALE—Title—Separation——When the price is paid in full for a certain number of articles out of a larger number, all of which are identical in kind and value, title will pass without a separation to the vendee if so intended by the parties.—*Kingman v. Holenquist*, S. C. Kan., June 11, 1887; 13 Pac. Rep. 168.

203. SCHOOL DISTRICTS—Contracts—Liability——A contract for supplies does not bind a school district, unless it was authorized at a meeting of the trustees, or the supplies are received and used under such circumstances as to raise the presumption of a common consent of the district.—*Andrews v. School District*, S. C. Minn., June 13, 1887; 33 N. W. Rep. 217.

204. SCHOOL DISTRICTS—Funds—Abolition——Money apportioned to a school district, since abolished, may be held by trustees appointed by the court for the benefit of the district.—*School District v. City of Concord*, S. C. N. H., March 11, 1887; 9 Atl. Rep. 630.

205. SCHOOL LANDS—Title—Swamp—Land Grant.——Congress by enabling act granted to the State in every township sections numbered 16 for the use of schools for the inhabitants of such township. Said act was accepted by the constitutional convention of Illinois, August 26, 1818, *held*, the State was a purchaser for a valuable consideration, and that the lands were not public lands, nor affected by act of congress September 28, 1850, enabling certain States to reclaim "swamp-lands" unsold at the passage of the act.—*Trustees of Schools v. Schroll*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 243.

206. SECRETARY OF STATE—Official Acts—Performance—Appeal—Reversal——The official acts of the secretary of state of North Carolina must be performed personally. Where the land grant offered in evidence is defective because signed by the secretary per a clerk, but it relates only to a portion of the tract claimed as a whole in one cause of action, the appellate court cannot affirm the judgment as to a part of the land and reverse it as to the rest.—*Beam v. Jenninge*, S. C. N. Car., May 2, 1887; 2 S. E. Rep. 245.

207. SECRETARY OF STATE—Secretary of Bureau—Dismissal.——The secretary of state has no power to discharge the secretary of the bureau of vital and sanitary statistics.—*Carr v. Stewart*, S. C. Ind., May 23, 1887; 12 N. E. Rep. 107.

208. SET-OFF—Agent—Notice—Executory Contract.——When a purchaser is notified before the delivery and the acceptance of the goods that the seller is only an agent, he cannot set-off against the action by the owner for the value of the goods, the amount due to him from the agent for prior transactions,—*McLachlin v. Brett*, N Y, Ct. App., April 19, 1887; 12 N. E. Rep. 17.

209. SAERIFF—Levy—Justification.——The officer cannot justify his action in levying on property, unless he return the writ to the court to which it is returnable. *Wright v. Marvin*, S. C. Vt., June 6, 1877; 9 Atl. Rep. 601.

210. SHERIFF—Negligence—Bond——When a sheriff levies on property by attachment which he released on the claim of a third party, who gives bond therefor, the sheriff taking no pains to learn whether the bondsmen were good nor compelling them to justify, the sheriff and his bondsmen will be liable, it being impossible for the plaintiff to collect his subsequently obtained judgment, or to collect the judgment on the bond.—*Noble v. Desmond*, S. C. Cal., May 21. 1887; 14 Pac. Rep. 16.

211. STATUTE—Enactment—Reference to Title.——Section 4 of act of February 23, 1883, extending the provisions of the "An Act to establish the Canebrake agricultural district," is void, because it refers only to the title of the act sought to be extended.—*Stewart v. Co. Commrs. of Hale Co.*, S. C. Ala., May 3, 1887; 2 South. Rep. 270.

212. STATUTES—Repeal—Effect.——When a party sues for damages accruing to him from allowing Texas cattle to run at large under a penal statute, which is repealed after the act is done, his action is not defeated thereby, as his rights are expressly preserved under the Iowa law.—*Kemmish v. Ball*, U. S. C. C. (Iowa), March Term, 1887; 12 N. E. Rep. 759.

213. STATUTES—Repeal—Gravel Roads.——The gravel road act of 1877 is not repealed by the act of 1885, which expressly says it is not intended to repeal any act on the subject. The legislature intended to establish two systems.—*Montgomery Co. v. Fullen*, S. C. Ind., May 27, 1887; 12 N. E. Rep. 298.

214. TAXATION—Constitutional Limit—Road Tax.——In Illinois, in counties not having township organization, a road tax is a county tax, and under constitution of Illinois, art. 9, § 8, a road tax levied by such a county, in addition to the other county taxes, amounting to seventy-five cents per $100, is invalid.—*Wright v. Wabash, etc. R. Co.*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 240.

215. TAXATION—Constitutionality—Race Distinction.——White persons cannot be heard to object to the constitutionality of a tax, because it is also levied on the property of colored people, who are not allowed to vote on the question nor to enjoy the benefits of the tax.—*Norman v. Boaz*, Ky. Ct. App., May 12, 1887; 4 S. W. Rep. 316.

216. TAXATION—Exemption—Colleges.——Property used exclusively for a college is exempt from taxation, though some of the teachers may reside therein.—*Blackman v. Houston*, S. C. La., May 9, 1887; 2 South. Rep 193.

217. TAXATION—Failure of Title—Liability.——A county is liable to one who does not get a good title at a tax-sale owing to the default of an official, though the default occurred prior to, but the sale after the act on that subject.—*Hurd v. Hamill*, S. C. Colo., June 15, 1887; 14 Pac. Rep. 126.

218. TAXATION—Interest—Reduction of Assessment.——Under Gen. Laws N. H., ch. 57, § 9, a tax-payer is liable for ten per cent. interest on the amount finally levied on him, from December 1, of the year in which it was assessed, though the original assessment is reduced on appeal.—*W. U. Tel. Co. v. State*, S. C. N. H., March 11, 1887; 9 Atl. Rep. 547.

219. TAXATION—Liens—Personal Property.——Where personal property is sold and the proceeds paid into court in a contest between lien holders, the county has no preference in a petition for payment of past taxes thereon out of the fund, and the lien holders must be preferred.—*Howard Co. v. Strother*, S. C. Iowa, June 14, 1887; 33 N. W, Rep. 238.

220. TAXATION—Levy—Place of Meeting.——Under the law of 1875, a sale for taxes, part of which were levied by the board of supervisors at a place where it was not authorized to meet, is void.—*Capital S. Bank v. Lewis*, S. C. Miss., May 9, 1887; 2 South. Rep. 243.

221. TAXATION—Payment—Recovery—Illegality.——When a party pays his taxes, which are erroneously

assessed, though demanding a reduction, he may recover the excess, when a statute requires the municipality to refund taxes so collected.—*City of Indianapolis v. Vajen*, S. C. Ind., June 14, 1887; 12 N. E. Rep. 311.

222. TAXATION—Place — Insurance Company.——An insurance company is taxable in the town, where its principal office is, on its stocks, bonds and other personal property, in which its funds have been invested.—*City of Portland v. Union, etc. Co.*, S. J. C. Me., March 4, 1887; 9 Atl. Rep. 613.

223. TAXATION—What Taxable as Real Estate——The lands appropriated wholly to railroad purposes, together with the tracks, buildings, structures and erections ordinarily and properly pertinent to railroads, the public works and appurtenances, and all property strictly necessary for the operation of railroads franchises, are not taxable as real estate, under the general laws of Pennsylvania, making real estate, houses, lands or lots of ground taxable.—*Northumberland v. Philadelphia, etc. R. Co.*, S. C. Penn., May 9, 1887; 9 Atl. Rep. 504.

224. TELEGRAMS—Transmissions — Errors — Liability. ——A party sent a telegram containing fourteen words, which, as delivered, contained thirteen words, and the sender suffered loss thereby. The sending operator testified that he counted and sent fourteen words, that the receiving operator was not competent, and that the mistake could have been easily avoided. *Held*, there was evidence of gross negligence, which ought to have gone to the jury.—*Pegram v. West. U. T. Co.*, S. C. N. Car., May 16, 1887; 2 S. E. Rep. 256.

225. TREATIES—Customs—Most Favored Nation Clause. ——The admission by treaty of Hawaian Islands productions free of duty in return for concessions from these, does not authorize Denmark to claim similar privileges under the treaty with that nation.—*Bartram v. Robertson*, U. S. S. C., May 23, 1887; 7 S. C. Rep. 1115.

226. TROVER — Demand — Conversion. ——When a party demands goods, which have come into possession of a landlord by the death of the tenant, to whom they were loaned, a reply by the landlord, "Let some one, who knows the goods, come and get them," is not a conversion thereof.—*Butler v. Jones*, S. C. Ala., May 13, 1887; 2 South. Rep. 300.

227. USURY—Conflict of Laws — Evidence. ——In an action brought in Nebraska, on a note made and payable in Georgia, when the defense is usury, the plaintiff must prove the law of Georgia allowing him such interest, and the table of the interest rates of other States in the Alabama session acts, is admissible in evidence.—*Camp v. Randle*, S. C. Ala., Feb. 21, 1887; 2 South. Rep. 287.

228. USURY—Mortgage—Liens — Subrogation ——When a party takes a mortgage on lands for liens thereon discharged by him, which mortgage is adjudged void for usury, his assignee cannot assert the liens so discharged.—*Perkins v. Hall*, N. Y. Ct. App., May 10, 1887; 12 N. E. Rep. 48.

229. USURY—National Bank—Receiver.——A receiver of an insolvent corporation can recover from a national bank usurious interest paid in accordance with Rev. Stat. U. S. § 5198.—*Barbour v. Nat. Ex. Bank*, S. C. Ohio, April 25, 1887; 12 N. E. Rep. 5.

230. VENDOR'S LIEN—Pleading.——In a suit to enforce a vendor's lien for unpaid purchase money, the complaint must aver a tender of a sufficient deed and should make profert thereof.—*Goodwine v. Morey*, S. C. Ind., May 20, 1887; 12 N. E. Rep. 82.

231. VENDOR AND VENDEE—Enforcing Contract—Perfecting Title.——Where a vendee sues on a note for the purchase money of land and files a deed for the land in the suit, he will be entitled to judgment and to costs, if he can give a good title before judgment, when the defendant was not ready to make payment and did not make a deposit to prevent further costs.—*Hobson v. Buchanan*, S. C. N. Car., May 2, 1887; 2 S. E. Rep. 180.

232. WARRANTY—Breach—Action — Moneyed Demand. ——An action for breach of warranty in the sale of personal property is a moneyed demand, the amount of which can be certainly ascertained, in the view of the attachment law.—*Guy v. Lee*, S. C. Ala., Feb. 18, 1887; 2 South. Rep. 273.

233. WATER-COURSES—Leases—Obstruction.——A lease of so much water power as may not be required for navigation, does not require the lessor to keep the canal in repair nor to furnish the water, and when the canal has been abandoned and sold under liens antedating the lease, the purchaser is not liable to the lessee for obstructing the flow of water by using the canal for a railroad track.—*Hougland v. New York, etc. R. Co.*, S. C. Ind., May 10, 1887; 12 N. E. Rep. 83.

234. WILL—Bequest—Support of Minors.——A testator directed the interest accruing on his estate, or so much as is necessary, be applied to the maintenance and support of his grandchildren during their minority. *Held*, that those who furnished maintenance to the children could recover of the executor. 2. That they were entitled to proper education, in a private school, if the income was sufficient. 3. That it could not be required at a grandchild, though a boy and 17 years old, engaged in labor to assist in his support.—*Patterson v. Read*, N. J. Ct. Ch., April 30, 1887; 9 Atl. Rep. 579.

235. WILL—Capacity—Evidence.——Where the issue is the capacity of a testator, it is proper to ask a physician what the act of suicide would indicate as to soundness of mind.—*Frary, Exc. v. Gusha*, S. C. Vt., May 27, 1887; 9 Atl. Rep. 549.

236. WILL—Capacity—Evidence.——Where a will is contested on the theory that, at the time of making the will, the testator was subject to insane delusions concerning some of his children, the uniform evidence of his business associates that he was perfectly competent to transact ordinary business, and that they had noticed nothing to indicate an unsound mind: *Held*, to overcome the theory of contestants.—*Schneider v. Manning*, S. C. Ill., June 17, 1887; 12 N. E. Rep. 267.

237. WILL—Construction.——A testator, having made provision for A and for the son of the testator, direct that the residue of his estate, real and personal, should be invested, and if his son married and had children then such residue should revert to the children after the death of the son, but if he died without marrying then to certain others: *Held*, that the devise, though contingent, carried the intermediate rents and profits of the real estate and the income of the personal, and that the son had no interest in the residuary estate.—*Harford v. Haines*, Md. Ct. App., May 13, 1887; 9 Atl. Rep. 540.

238. WILL—Devises—Conflicts — Intention.——Where a will in one section made a specific devise, and in the next section devised all the testator's estate in a manner inconsistent with but not mentioning the earlier devise: *Held*, the intention of the testator must govern, and the specific devise is not revoked by the later provision.—*Price v. Cole*, S. C. App. Va., May 19, 1887; 2 S. E. Rep. 200.

239. WILL—Devise—Implied Promise—Limitations.—— In a suit for money devised to a wife in lieu of a devise of her land, her claim is not barred by the statute of limitations, the title to the land still being in her.—*Peck v. Price*, Ky. Ct. App., May 12, 1887; 4 S. W. Rep. 306.

240. WILL—Devise of Income—Lands.——A devise of the income or of the use and profits of land, is equivalent to a devise of the land itself.—*Ryan v. Allen*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 65.

241. WILL—Estate—Inheritance—Trusts.——A devise will take a fee in proper devised, if that appears to be the intention of the will without words of inheritance, but it may nevertheless be shown by his written admissions that he was to take the property in trust for himself and others.—*Bromby v. Gardner*, S. J. C. Me., March 5, 1887; 9 Atl. Rep. 621.

242. WILL—Payment of His Discharged Debts—Construction——When by will a testator directed that the balance due on his compromised debts should be paid in full, the interest thereon is included.—*Sinclair's Appeal*, S. C. Penn., May 9, 1887; 9 Atl. Rep. 637.

243. WILL—Probate—Witness.——It is not necessary,

in Illinois, for a subscribing witness, on the probate of a will, to say in the language of the statute, that he believes the testator was of "sound mind and memory" when he signed the will, a statement of his belief in equivalent words is sufficient.—*Bice v. Hall*, S. C. Ill., May 12, 1887; 12 N. E. Rep. 236.

244. WILL—Remainder—Construction.——A testator bequeath all his property to his wife, and after her decease, the order "my executors to divide the property equally between his two children, or their legal representative:" *Held*, that "or their legal representatives," was used in the sense of "heirs," and that the children took, after the death of the testator, a vested remainder in fee, not liable to be divested by the death of either prior to the decease of the life-tenant.—*Chasy v. Gowdry*, N. J. Ct. Ch., May 5, 1887; 9 Atl. Rep. 580.

245. WITNESS—Cross Examination.——A witness on cross-examination can only be examined as to matters testified to in chief, except to show interest or prejudice or to explain or modify former statements.—*Lawler v. Henderson*, S. C. Kan., June 11, 1887; 14 Pac. Rep. 164.

246. WITNESS—Incompetency—Decedent—Issue.——Where the heirs have parted with their interest and have defaulted, they are no longer incompetent as witnesses on account of the death of their ancestor.—*Scherer v. Ingerman*, S. C. Ind., May 27, 1887; 12 N. E. Rep. 304.

QUERIES AND ANSWERS.*

QUERY NO. 3.

In 1852, G married B, daughter of N and wife. In 1867 N devised all his property to his wife. In January, 1868, N and his wife jointly made another will in which the former was revoked in so far as it vested the interest which B, wife of G, would have at their death, and they devise *that* interest to B's children instead of to B, and make the will irrevocable. This last *irrevocable* will was made in consideration that G would withdraw some charges he had made in a divorce suit pending between him and his wife. The irrevocable will was duly acknowledged as other conveyances of property usually are, and was delivered over to G, who, after having it recorded, has kept it in possession. Afterwards (in 1882) H, the wife of N, who survived him, made another will devising the whole of the property, disinheriting the children of B. What are B's children's rights. L. T. F.

QUERIES ANSWERED.

QUERY NO. 15 [*24 Cent. L. J. 311.*]

The New Hampshire statute of adoption gives adopting parent right of inheritance and distribution to the exclusion of parent by nature. Adoption takes place in New Hampshire. Parent and adopted child are afterward domiciled in Vermont, where child dies, owning property, both real and personal, situated in Vermont. Will New Hampshire law govern. D.

Answer. The law regulating the descent and distribution of personal property, is the law of the last domicile of the intestate. Whart. Conf. Laws, § 576. The distribution of realty is decided by the law of its location. *Idem*, § 560. The law of Vermont will apply in both cases. E. S. D.

RECENT PUBLICATIONS.

THE LAW OF TORTS. A Treatise on the Principles of Obligations Arising from Civil Wrongs in the Common Law. By Frederick Pollack, of Lincoln's Inn, Esq., Barrister-at-law, Corpus Professor of Jurisprudence in the University of Oxford; Professor of the Common Law in the Inns of Court; Late Fellow of Trinity College, Cambridge; and Honorarary Doctor of Laws in the University of Edenburgh. Author of "Principles of Contract," "A Digest of the Law of Partnership." London: Stevens & Sons, 119 Chancery Lane, Law Publishers and Booksellers. 1887. Boston: C. C. Soule, 15½ Beacon St.

This is the latest work of a learned and accomplished English author, its preface, in the form of an open letter to Hon. Oliver Wendal Holmes of the Supreme Judicial Court of Massachusetts, being dated, Christmas Vacation, 1886.

The subject, it is almost superfluous to say, is of the most intensely practical character, appealing to the business and bosom of every lawyer within the domain of the common law of England, and of course demands of any author who may treat it laborious and thoughtful investigation, and lucid and careful exposition of the results of his researches.

Although the law of torts is now very extensive, it is as a system of very modern origin. The most ancient book devoted to the subject, the author tells us, that he was able to find, was a meagre digest published in 1720, "remarkable chiefly for the depth of historical ignorance which it occasionally reveals." Within the past fifty years the material for such works as that before us has increased enormously, and has become well worthy of the systemalizing process to which this author, and others before him, such as Judge Cooley for example, have subjected it.

The author seems to think that he is the first in this virgin field. He says: "the purpose of this book is to show that there is really a law of torts, not merely a number of rules of law about various kinds of torts, that this is a true living branch of the common law, not a collection of heterogeneous instances." Whether he is right in assuming the priority which he claims, of having first reduced to order this "collection of heterogeneous instances," is an immaterial, issue so far as the profession is concerned. He has given us in this book an excellent, orderly, systematically arranged compendium of the law, on one of the most practically important branches of the law as now administered in the courts, and no doubt lawyers on both sides of the Atlantic will be glad to avoid themselves of the fruits of his labor.

JETSAM AND FLOTSAM.

THE JUDGE WAS UP TO SNUFF.—A witness was being examined before a Dakota justice of the peace, and in the course of his testimony mentioned having said to the prisoner at one time that he had a horse he wanted to trade.

"Hey!" said the prosecuting attorney, who was conducting the examination, "was it that sor'l one of yours?"

"Yes."

"Want to trade yet?"

"Don't care if I do—what you got?"

"He hasn't anything that you want," put in the attorney for the defense; "if you want to trade I can give you a mighty good show with my bay mare."

"Order in the court room!" roared the justice, walking up at this point, "what was that last testimony you gave?"

"I said I once met the prisoner and said to him: 'Bill, I'd like to trade you that sor'l hoss o' mine' "—

"Hold on a minute," said the judge, "you don't want to trade your sor'l yet, I s'pose?"

"I might if I got a good chance."

"Say," continued the court, "if you mean business I can give you just the slickest swap for that buckskin hoss of mine an' 'bout $10 to boot that you ever seen! This court is adjourned for one hour. Come out to the barn and look my hoss over."